Supreme Court, U.S.
FILED

05 15 35 MAY 25 2006

OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

DAVID HAMILTON; SARAH HAMILTON, A MINOR,
PETITIONERS

v.

WASHINGTON STATE PLUMBING & PIPEFITTING INDUSTRY PENSION PLAN; PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND; WESTERN WASHINGTON U.A. SUPPLEMENTAL PENSION TRUST; AND MARY HAMILTON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Jerome C. Scowcroft
Counsel of Record
SCOWCROFT LAW OFFICES
11320 Roosevelt Way, N.E.
Seattle, WA 98125
(206) 365-5500

CURRY & TAYLOR ♦ WASH D.C. ♦ (202) 393-4141 ♦ USSCINFO.COM

QUESTION PRESENTED

Whether the state court in a domestic relations proceeding can make an assignment of death benefits to a participant's children that will overcome the surviving spouse's right to a surviving spouse annuity under a pension plan subject to ERISA.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

TABLE OF AUTHORITIES ii

OPINIONS BELOW 1

JURISDICTION 1

RELEVANT PROVISIONS INVOLVED 2

STATEMENT 3

REASONS FOR GRANTING THE PETITION 7

CONCLUSION 20

APPENDIX

Circuit Court Opinion 1a

District Court Order 28a

District Court Judgment 62a

Order Denying Rehearing 64a

Relevant Provisions Involved 66a

TABLE OF AUTHORITIES

Page

CASES

BLUE V. UAL CORP., 160 F.3D 383, 385 (7TH CIR. 1998). 18

BOGGS V. BOGGS, 520 U.S. 833 (1997) ..... 9, 10 ,13

BRANDON V. THE TRAVELERS INSURANCE COMPANY, 18 F.3D 1321 5TH CIR. 2000) 13

CARLAND V. METROPOLITAN LIFE INS. CO., 935 F.2D 1114, 1121 (10TH CIR.), CERT. DENIED, 502 U.S. 1020 (1991) 14, 19

HAMILTON V. WASHINGTON STATE PLUMBING & PIPEFITTING INDUSTRY PENSION PLAN, ET AL., 433 F.3D 1091 (9TH CIR. 2006) 1

HAWKINS V. COMMISSIONER, 86 F.3D 982 (10TH CIR. 1996) 11

MANNING V. HAYES, 212 F.3D 866 (2000) 13

METROPOLITAN LIFE INS. CO. BIGELOW, 283 F.3D 436 (2D CIR. 2001) 11, 19

METROPOLITAN LIFE INS. CO. V. MARSH, 119 F.3D 415 (6TH CIR. 1997) 11,. 14, 19

METROPOLITAN LIFE INSURANCE CO. V. WHEATON, 42 F.3D 1080 (7TH CIR. 1994) 11, 14, 19

STEWART V. THORPE HOLDING CO. PROFIT SHARING PLAN, 207 F.3D 1143 (9TH CIR. 2000) 11, 12, 19

TRUSTEES OF THE DIRECTORS GUILD OF AMERICA-

PRODUCER PENSION BENEFITS PLANS v. TISE, 234 F.3D 415 (9TH CIR. 2000) 18

DEPARTMENT OF LABOR RULINGS

MATTER OF GAIL INMAN-CAMPBELL, DOL ADVISORY OPINION NO. 2000-09A, PENS. PLAN GUIDE (CCH) P 19,988F (2000 WL 979928), JULY 12, 2000, P.4. 17

FEDERAL STATUTES

THE EMPLOYEES RETIREMENT INCOME SECURITY ACT OF 1974 ("ERISA"), 29 U.S.C. §§1001 2

RETIREMENT INCOME EQUITY ACT OF 1984 ("REA"), PUB. L. NO. 98-397 §303(d), 98 STAT. 1426 (1984) 2

ERISA SECTION 3(3), 29 U.S.C. §1002(3) 3

ERISA SECTION 4(a), 29 U.S.C. §1003(a) 3

ERISA SECTION 205, 29 U.S.C. §1055 2

ERISA SECTION 206(d)(1), 29 U.S.C. §1056(d)(1) 12, 18

ERISA SECTION 206(d)(3)(A), 29 U.S.C. §1056(d)(3)(A) 13

ERISA SECTIONS 206(D)(3)(B) – (D), 29 U.S.C. §§1056(D)(3)(B) – (D) 2

ERISA SECTION 206(D)(3)(B)(I)). 29 U.S.C. §1056(D)(3)(B)(I) 12

ERISA SECTION 206(D)(3)(B)(I)(I), 29 U.S.C. §1056(D)(3)(B)(I)(I) 9

ERISA SECTION 1056(D)(3)(C), 29 U.S.C. §1056(D)(3)(C) .....6, 17 ,19

ERISA SECTION 206(D)(3)(F)(I), 29 U.S.C. §1056(D)(3)(F)(I) 16

ERISA SECTION 206(D)(3)(K), 29 U.S.C. §1056(D)(3)((K). 9

ERISA SECTION 514(A), 29 U.S.C. §1144(A) 12

ERISA SECTION 514(B)(7), 29 U.S.C. §1144(B)(7)..... 12

28 U.S.C. §1254(1)..... 2

29 U.S.C. §1055 2

STATE STATUTES

REVISED CODE OF WASHINGTON (RCW) 26 .16.030..... 3

MISCELLANEOUS

ERISA SELECTED LEGISLATIVE HISTORY 239, 242 (1992), COMMENT BY REP. KENNELLY, AUGUST 9, 1984. 11

David and Sarah Hamilton (the "Children") respectfully petition the Court to issue a writ of certiorari to the United States Court of Appeals for the Ninth Circuit for the reasons set forth below.

OPINIONS BELOW

Review is sought from the judgment filed by the Ninth Circuit Court of Appeals on January 10, 2006, in *Hamilton v. Washington State Plumbing & Pipefitting Industry Pension Plan, et al.*, 433 F.3d 1091 (9th Cir. 2006). The opinion of the Court of Appeals is reproduced in the Petition Appendix ("Pet.App.") at pages 1a – 27a. The judgment of the Court of Appeals is reproduced at Pet.App. 62a – 63a. The order of the Court of Appeals denying rehearing and rehearing en banc is reproduced at Pet.App. 64a – 65a. The unpublished decision of the United States District Court for the Western District of Washington is reproduced at Pet.App.28a – 61a.

When the Question for Review was Raised

The question presented for review was raised in cross-motions for summary judgment in the District Court. It was identified as the issue presented for review in Respondents' opening brief to the Court of Appeals.

JURISDICTION

The Court of Appeals entered judgment on January 10, 2006. It denied rehearing and rehearing en banc on February 24, 2006. The Court of Appeals'

mandate issued April 3, 2006. This Court has jurisdiction under 28 U.S.C. §1254(1).

RELEVANT PROVISIONS INVOLVED

This case involves sections 205 and 206 of the Employees Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§1001 *et seq.*, as amended by the Retirement Income Equity Act of 1984 ("REA"), Pub. L. No. 98-397 §303(d), 98 Stat. 1426 (1984). Section 205 requires pension plans to provide for payment of a survivor annuity[1] to the participant's surviving spouse. Section 206(d)(3)(A) permits the state court to order payment of any plan benefit payable with respect to a participant to any alternate payee, provided the order satisfies the requirements for a qualified domestic relations order ("QDRO") specified in sections 206(d)(3)(B) – (D). Section 206(d)(3)(K) defines "alternate payee" to include the plan participant's children. Section 206(d)(3)(F) permits the state court to order payment of the survivor annuity to a former spouse instead of the surviving spouse if the order satisfies the QDRO requirements. 29 U.S.C. §§1055, 1056(d)(3)(A), (B) – (D), (F), (K). These provisions are set forth verbatim at Pet.App.66a – 70a.

---

[1] The survivor annuity is payable as a qualified joint and survivor annuity (QJSA) if the participant becomes eligible for benefits while married, or as a qualified preretirement survivor annuity (QPSA) if the participant dies while married before becoming eligible for benefits. This case involves the QPSA, because Michael Hamilton died before becoming eligible to receive benefits. However, the Ninth Circuit's decision applies equally to both forms of annuity.

STATEMENT

Facts

Petitioners David and Sarah Hamilton (the "Children") are the children of Michael Hamilton and Linda Oppegaard. Respondent Mary Hamilton is Michael Hamilton's surviving spouse.

Each of the Respondent Plans is an employee benefit plan within the meaning of ERISA sections 3(3) and 4(a), 29 U.S.C. §§1002(3) and 1003(a).

Michael Hamilton and Linda Oppegaard were married on December 4, 1982. David and Sarah Hamilton were born on August 1, 1984 and November 12, 1989, respectively. Michael Hamilton divorced Linda Oppegaard on April 3, 1996, after fourteen years of marriage. He married Mary Hamilton two months later.

Throughout his marriage to Linda Oppegaard, Michael Hamilton resided in the State of Washington and participated in each of the Plans. The Plan benefits that accrued while Michael Hamilton was married to Linda Oppegaard were community property under Washington law. Revised Code of Washington (RCW) 26.16.030.

Michael Hamilton and Linda Oppegaard negotiated for the division of Plan benefits during their divorce. Each of the Plans provides a surviving spouse annuity as required by ERISA section 205 and a lump sum benefit payable on the participant's death. The

lump sum benefit differs from the surviving spouse annuity in several respects:

1) It is payable as a lump sum;

2) Its value is the amount of contributions made by the participant to the Plan, whereas the surviving spouse annuity is valued on an actuarial basis.[2]

3) It is payable under circumstances when a surviving spouse annuity is not payable; and

4) It is payable according to the participant's designation of beneficiaries.

One alternative would have been to submit an agreed order explicitly assigning to Linda Oppegaard all or a portion of the surviving spouse annuity. That is an assignment to which she would normally have been entitled and which would have been enforceable under the Court of Appeals' decision.

However, Michael Hamilton and Linda Oppegaard were concerned about providing support for

---

[2] Defined benefit plans are structured so that the payment of a monthly annuity during the retirement of the participant is actuarially equivalent to payment of a reduced monthly annuity during the participant's retirement followed by payment of a lesser amount during the remaining life of the surviving spouse. Because of investment earnings and the time value of money held by the plan, payment of the lump sum death benefit will reduce but not necessarily eliminate a surviving spouse annuity. However, payment of a surviving spouse annuity will generally bar any other death benefit by exhausting the actuarial liability of the plan.

the Children. Michael Hamilton was suffering from cancer and could not obtain life insurance. He and Linda Oppegaard therefore agreed that in lieu of life insurance, Michael Hamilton would name the Children as his beneficiaries under each of the Plans. Linda Oppegaard agreed in return to forego any interest in the surviving spouse annuity.

They incorporated their agreement into an order (the "Domestic Relations Order") that was signed by the state court on April 3, 1996. The Domestic Relations Order includes an Exhibit A which requires that under each Plan:

> The Husband shall name the children of the marriage, David and Sarah, as *the beneficiaries under the pension in lieu of life insurance which he is presently unable to obtain*, which obligation shall terminate when the youngest child reaches 18 years of age.

Michael Hamilton died on June 10, 2002, when both Children were under the age of 18. He was therefore required under the Domestic Relations Order to have named the Children as the beneficiaries under each Plan.

The Children submitted their claim to the Plans upon Michael Hamilton's death. They claimed that they were entitled to recover benefits as a matter of law because the Domestic Relations Order is a QDRO. They also asked the Plans to tell them the amount and form of benefits they were entitled to recover.

The Plans denied the Children's claims on the grounds that the Domestic Relations Order is not a QDRO, and even if it were, Mary Hamilton's right to a surviving spouse annuity prevailed over the Children's claims.

However, the Plans told the Children the amount and form of benefits to which they would be entitled if their claims were upheld. When the Children filed suit, they conformed their claim against each Plan to the amount and form of benefit described in the Plan's letters to them.

Course of Proceedings and Disposition Below

The District Court granted summary judgment in favor of the Children. The District Court held that the Domestic Relations Order is a QDRO because it meets all of the statutory requirements for QDROs in ERISA sections 206(d)(3)(B) – (D). Pet.App.42a – 51a.

The District Court also ruled that the Children's claim prevailed over that of Mary Hamilton, because compliance with QDROs under ERISA is mandatory, and "[a] state court's domestic relations order overrides the terms of the plan if it meets seven [QDRO] criteria laid down in §1056(d)(3)(C) and (D)." Pet.App. 55a.[3]

---

[3] The District Court also construed the terms of the Plans to require payment of the QDRO, but that discussion related to whether the Plans had acted arbitrarily and capriciously in denying the Children's claims rather than the mandatory nature of the QDRO. *See* Pet.App.55a - 57a.

Mary Hamilton and the Plans did not appeal from the District Court's determination that the Domestic Relations Order is a QDRO. Their appeal raised only one issue, which is quoted from p.4 of their opening brief:

> "Can Mary Hamilton's surviving spouse benefit be extinguished by a domestic relations order that says nothing about this benefit?"

The Ninth Circuit Court of Appeals reversed the decision of the District Court and held as follows (Pet.App.21a.):

> We conclude that a surviving spouse benefit must be explicitly assigned to a former spouse in a QDRO in order to overcome the surviving spouse's right to a QPSA under ERISA.

The Court of Appeals also opined that the District Court erred in holding that the Domestic Relations Order is a QDRO. However, that holding was not appealed and therefore not fully argued. *See* Section III of this Petition.

REASONS FOR GRANTING THE PETITION

Every year thousands of divorce cases are filed involving children.[4] Retirement plans are among the principal assets of many of the families involved in such

---

[4] Data from the Washington State Court System (*See* www.courts.wa.gov/caseload) shows that in Washington State in 2004, 29,409 divorces were filed of which 13,993 involved children. These figures would be in the hundreds of thousands or more on a national level.

proceedings. The Court of Appeals' decision would prevent the state court in a domestic relations proceeding from making any assignment to the children of retirement benefits that become payable on the participant's death. That is because such an assignment could always be defeated if the participant were to remarry and be survived by a subsequent spouse.

This Court should therefore grant certiorari because the Court of Appeals' decision violates ERISA as amended by the REA by:

1. Undermining the ability of state courts to protect the children in a domestic relations proceeding;

2. Destroying the certainty of enforcement which Congress sought to establish in enacting the REA; and

3. Undermining the federal system by taking away from state courts and state legislatures domestic relations matters that Congress wished to reserve for them.

I. THE COURT OF APPEALS' DECISION UNDERMINES THE ROLE OF STATE COURTS AND STATE LAW IN DOMESTIC RELATIONS PROCEEDINGS.

The Court of Appeals' decision, if allowed to stand, would violate the fundamental objectives of Congress in enacting the REA. Those objectives are:

A. To enable state courts to provide for the protection of children in domestic relations proceedings;

B To provide certainty that domestic relations orders will be enforced if they satisfy the QDRO requirements; and

C. To preserve the authority of state courts and state legislatures in domestic relations proceedings.

A. Protection of Children. The Court of Appeals' decision fails to account for the fact that the participant's children are entitled to the same level of protection as the divorcing spouse under the QDRO provisions of ERISA. While recognizing that the surviving spouse annuity may be assigned to the divorcing spouse, the decision mandates that a domestic relations order which awards death benefits to children will fail whenever the participant is married when he dies, even though the order satisfies all the QDRO requirements. Such differentiation between the children and divorcing spouse is contrary to the language and purpose of ERISA as amended by the REA.

ERISA Section 206(d)(3)(B)(i)(I) states that a QDRO may award any of the plan benefits payable with respect to the participant to any "alternate payee". 29 U.S.C. §1056(d)(3)(B)(i)(I). Section 206(d)(3)(K) defines "alternate payee" to include "any...child, or other dependant of a participant." 29 U.S.C. §1056(d)(3)(K). Consistent with the definition of "alternate payee," this

Court recognized in *Boggs v. Boggs*, 520 U.S. 833, 847 (1997)(emphasis added) that:

> In creating the QDRO mechanism, Congress was careful to provide that the alternate payee, the "spouse, former spouse, *child, or other dependent* of a participant," is to be considered a plan beneficiary. These provisions are *essential to one of REA's central purposes*, which is to give enhanced protection to the spouse *and dependent children* in the event of divorce or separation, and in the event of the death of the surviving spouse.

There is absolutely no justification for affording the children a lower level of protection than the divorcing spouse. To the contrary, the children are the most innocent and vulnerable of the persons affected by a divorce. The divorce is thrust upon them against their wishes and beyond their control. Their plight stands in stark contrast to that of an adult such as Mary Hamilton who marries a previously divorced participant, and can be expected to realize that the participant's assets may be subject to prior obligations.

The support obligations to which the QDRO provisions are directed have been characterized by this Court as "deeply rooted moral responsibilities" *Boggs v. Boggs*, 520 U.S. at 848. The Court of Appeals' decision sacrifices those obligations to the desires of the plan participant who might remarry, and to the later spouse who marries the participant knowing that he already has children. Congress is unlikely to have intended a result that produces such a distortion of fundamental values.

B. Certainty: The QDRO provisions were enacted so that "[s]pouses and other dependents, and pension plans as well, are afforded the certainty of treatment under the bill in connection with benefit rights extended by domestic relations orders relating to alimony, child support, and marital property rights." ERISA Selected Legislative History 239, 242 (1992), comment by Rep. Kennelly, August 9, 1984.

Under the Court of Appeals' decision, any award of child support would be defeated by the death of a remarried participant, because it would not be an explicit assignment of a survivor annuity to a former spouse. The child support payments would terminate and be replaced by the surviving spouse annuity. While the state court might try to disguise a child support award as a survivor annuity for the former spouse, the Courts of Appeals have universally rejected an interpretation of the QDRO provisions that would require such artificiality. *Stewart v. Thorpe Holding Co. Profit Sharing Plan*, 207 F.3d 1143, 1151-55 (9th Cir. 2000) (rejecting an "unduly narrow" reading of the specificity requirements for QDROs); *Metropolitan Life Ins. Co. v. Marsh*, 119 F.3d 415, 422 (6th Cir. 1997);[6] *Metropolitan Life Ins. Co. v. Wheaton*, 42 F.3d 1080, 1085 (7th Cir. 1994); Metropolitan *Life Ins. Co. Bigelow*, 283 F.3d 436 (2d Cir. 2001).

---

[5] 207 F.3d at 1155, interpreting the decision in *Hawkins v. Commissioner*, 86 F.3d 982 (10th Cir. 1996).

[6] *Marsh* was decided before ERISA was amended by the REA. However, post-REA cases have continued to follow the approach of *Marsh* as the cases cited herein indicate. For example, see the discussion in *Stewart*, 207 F.3d at 1153-1155.

Rather than promoting the certainty desired by Congress, the Court of Appeals' decision subjects the rights of alternate payees to future events beyond their control or that of the state court. The Court of Appeals' decision means that when the state court awards a death benefit to any alternate payee other than a former spouse, the alternate payee can be sure to recover only if the participant dies without remarrying, because no surviving spouse annuity would then be payable. If the participant were to remarry, the alternate payee's rights would depend upon whether the marriage lasts and whether the subsequent spouse survives the participant. Upon failure of the remarriage or death of the subsequent spouse, the same uncertainties would be repeated because the participant might marry again. The Court of Appeals' decision leads to the absurd situation of the alternate payee's interests rising and falling according to the vicissitudes of the participant's personal life after the divorce.

C. The Authority of the State Court: State courts have long recognized the need to preserve at least some of a participant's pension benefits for the spouse and children in the event of divorce. Before 1984, the spendthrift and preemption provisions of ERISA created uncertainty as to the power of state courts to accomplish that objective.[7]

---

[7] The spendthrift" provision, 29 U.S.C. §1056(d)(1), requires all ERISA-covered plans to include a provision that prohibits assignment of plan benefits. The preemption provision, 29 U.S.C. §1144(a), preempts any and all state laws that "relate" to employee benefit plans.

The REA was intended to solidify the role of state courts and state law in domestic relations proceedings. *See Stewart v. Thorpe Holding Co. Profit Sharing Plan*, 207 F.3d at 1149. It amended ERISA to state that that the spendthrift clause "shall not apply" to a domestic relations order that is determined to be a qualified domestic relations order," and that the preemption clause "shall not apply to qualified domestic relations orders (within the meaning of section 206(d)(3)(B)(i))." *See* ERISA sections 206(d)(3)(A) and 514(b)(7), 29 U.S.C. §§1056(d)(3)(A) and 1144(b)(7).

The REA represents the judgment of Congress that support issues which arise in domestic relations proceedings should be resolved by the state court under state law. "Support obligations, in particular, are 'deeply rooted moral responsibilities' *that Congress is unlikely to have intended to intrude upon* [in enacting ERISA]." *Boggs v. Boggs*, 520 U.S. at 848 (emphasis added). "Federal respect for state domestic relations law has a long and venerable history. When courts face a potential conflict between state domestic relations law and federal law, the strong presumption is that state law should be given precedence... The law of family relations has been a sacrosanct enclave, carefully protected against federal intrusion. One way our federalist system maintains the integrity of the folkways and mores of localities is through the conservation of state control over the creation and separation of families." *Brandon v. The Travelers Insurance Company*, 18 F.3d 1321, 1327 (5th Cir. 1994); *Manning v. Hayes*, 212 F.3d 866, 872 (5th Cir. 2000).

By ruling that a state court order which assigns death benefits to children cannot be enforced against a

surviving spouse, even if it satisfies the QDRO requirements, the Court of Appeals transgresses the boundary between state and federal authority that Congress sought to preserve.

1. This Case. This case is a perfect example. Michael Hamilton and Linda Oppegaard were concerned about preserving some of Michael Hamilton's pension benefits for the support of their children. They could not address that concern through life insurance, because Michael Hamilton was ill and could not qualify for life insurance.[8] They therefore negotiated an order that required Michael Hamilton to name the children as the beneficiaries under his pension plans. The state court signed the order in the exercise of its powers under the state domestic relations law. Surely the state court is the appropriate forum in which to address such matters.

2. Another Example – Disabled Children: It is not uncommon in a divorce proceeding for a child or other dependent to have disabilities that will require continued care and prevent the child from earning a living. The parents in such a proceeding might want to provide for the child by creating some reliable means of support after they are gone. Under plans like the ones

---

[8] It is well established that a QDRO requiring Michael Hamilton to designate the Children as the beneficiaries under an employer-sponsored life insurance policy would have been enforceable against a current or former spouse if Michael Hamilton had breached his obligation to name them as his beneficiaries. *Metropolitan Life Insurance Co. v. Wheaton*, 42 F.3d at 1083; *Metropolitan Life Insurance Company v. Marsh*, 119 F.3d 415 (6th Cir. 1997). *See also Carland v. Metropolitan Life Ins. Co.*, 935 F.2d 1114, 1121 (10th Cir.), *cert. denied*, 502 U.S. 1020 (1991).

in this case, a way of doing so would be to provide for payment of the lump sum death benefits to support the disabled child.

The Court of Appeals' decision would permit the state court to enter an order designating the divorcing spouse as the surviving spouse. But that might be unacceptable to the participant, who would want to ensure that the death benefits will remain available for the disabled child rather than the divorcing spouse and someone the divorcing spouse might marry in the future.

The divorcing spouse might also want to ensure that the death benefits will be available for the disabled child, and might as in this case be willing to forego his or her share of the surviving spouse annuity to achieve that objective.

Surely that is something the parties should be able to do in a divorce proceeding if state law permits. Yet under the Court of Appeals' decision, someone who marries the participant at a later time and survives the participant would take the entire death benefit unless the survivor annuity is specifically assigned to the divorcing spouse. Neither the participant, the divorcing spouse, nor the state court would have any way of ensuring the availability of pension assets to protect the disabled child. Nor would the state legislature have such power, because any measure enacted by the state legislature would be preempted.

The decision of the Court of Appeals would therefore take away powers that should be available in every state for the protection of its citizens.

II. THE COURT OF APPEALS' DECISION IS NOT JUSTIFIED BY THE AUTHORITIES ON WHICH IT RELIES.

The Court of Appeals relies on ERISA section 206(d)(3)(F)(i), 29 U.S.C. §1056(d)(3)(F)(i), which states that "To the extent provided in any qualified domestic relations order ...

> (i) the former spouse of a participant shall be treated as a surviving spouse of a participant for purposes of section 1055....

The Court of Appeals interprets the Children's argument to be that section 206(d)(3)(F) "does not exhaustively delineate how a QDRO can assign surviving spouse rights," and that "to accept [the Children's] argument, we would have to assume that while Congress intended for there to be multiple ways to assign surviving rights in a QDRO – e.g. to children as well as to a former spouse – the legislature decided to reference explicitly only one of those ways in §1056(d)(3)(F) – the former spouse scenario – and leave us guessing about the rest – e.g. the children scenario." Pet.App 13a.

The Court of Appeals errs in treating this case as if it involved the assignment of surviving spouse rights. The Children are instead claiming a form of benefit as to which ERISA section 205 is silent, and which is available under the Plans to persons other than the surviving spouse. The cases upon which the Court of Appeals relies are therefore inapplicable, because they all involve claims by a former spouse to a survivor annuity. In each case the claim was denied because the

domestic relations order referred only to benefits payable during the participant's lifetime. That is not the situation here. The IRS Publication cited by the Court of Appeals is likewise inapplicable because it states only that a child or other dependent cannot be treated as a participant's spouse. The Children do not seek to be treated as a spouse.

The Court of Appeals also errs in construing section 206(d)(3)(F) to specify requirements for assigning plan benefits.

> [S]ection 206(d)(3)(F) does not, in itself, limit the scope of the survivor benefits that may be assigned to an alternate payee pursuant to section 206(d)(3)(B). Rather, the general scope of permissible assignment is defined by section 206(d)(3)(B), as limited by sections 206(d)(3)(C) and 206(d)(3)(D). Section 206(d)(3)(B) provides broadly for the possibility of assigning not merely "benefits payable to a participant," but "all or a portion of the benefits payable with respect to a participant under a plan."

Matter of Gail Inman-Campbell, DOL Advisory Opinion No. 2000-09A, Pens. Plan Guide (CCH) P 19,988F (2000 WL 979928), July 12, 2000, p.4.

Even if the Children were claiming a survivor annuity, which they are not, the Court of Appeals' interpretation of 206(d)(3)(F) is unsupported by the statutory language and contrary to other cases which hold that the QDRO requirements in sections 206(d)(3)(B) – (D) are exhaustive and cannot be supplemented. *Trustees of the Directors Guild of*

America-Producer Pension Benefits Plans v. Tise, 234 F.3d 415, 424 (9th Cir. 2000); *Blue v. UAL Corp.*, 160 F.3d 383, 385 (7th Cir. 1998).

The Court of Appeals' decision also conflicts with the provisions of ERISA that define the scope of permissible assignments. Section 206(d)(3)(A) states that the anti-alienation provision of section 206(d)(1) applies to the assignment of "any benefit payable with respect to a participant" pursuant to a domestic relations order. However, it states that the anti-alienation provision "shall not apply if the order is determined to be a qualified domestic relations order." This means that the range of benefits which can be assigned by a QDRO is exactly the same as the range of benefits for which assignment is prohibited if the domestic relations order is not a QDRO. That is clearly *every* benefit payable with respect to a participant under the plan. 29 U.S.C. §§1056(d)(1), (3)(A).

In addition, section 206(d)(3)(B)(i)(I) states that "all or a portion" of the benefits assignable by a QDRO can be assigned to any "alternate payee". 29 U.S.C. §1056(d)(3)(B)(I). Section 206(d)(3)(K) defines "alternate payee" to include "any...child, or other dependent of a participant." There is no differentiation between children and other alternate payees with respect to the benefits that can be assigned to them.

The plain meaning of these provisions is that since the lump sum death benefits claimed by the Children are payable with respect to Michael Hamilton, and the Children qualify as alternate payees, the lump-sum benefits can assigned to them. The Court of Appeals' decision violates this statutory scheme.

III. WHETHER THE DOMESTIC RELATIONS ORDER IS A QDRO.

The Court of Appeals opined that the Domestic Relations Order does not satisfy the specificity requirements of ERISA section 206(d)(3)(C), because it does not specify the form of benefit that was assigned to the Children. The District Court rejected that argument and ruled that the Domestic Relations Order is a QDRO, because it required Michael Hamilton to name the Children as "the beneficiaries", and each Plan specifies the amount and form of payment to be made when the payee is a beneficiary other than a surviving spouse. Pet.App.49a. Mary Hamilton and the Plans did not appeal that ruling. Hence the basis for it was not briefed.

Virtually every court of appeals to consider the specificity requirements has held that they are satisfied if the domestic relations order is definite enough to inform the plan administrators with reasonable certainty of the amount and form of benefits to be paid and the persons entitled to receive them. *See Metropolitan Life Insurance Company v. Bigelow*, 283 F.3d at 439 (2nd Circuit); *Metropolitan Life Insurance Company v. Marsh*, 119 F.3d at 417, 422 (6th Circuit); *Metropolitan Life Insurance Co. v. Wheaton*, 42 F.3d at 1081 (7th Circuit); *Stewart v. Thorpe Holding Co. Profit Sharing Plan*, 207 F.3d at 1152 – 55 (9th Circuit); *Carland v. Metropolitan Life Insurance Company*, 935 F.2d at 1120 (10th Circuit).

The facts are undisputed that the specificity standard is satisfied in this case. The Court of Appeals states that before his death, Michael Hamilton was

entitled to receive a variety of benefits, and the Plans were uncertain as to what was assigned by the Domestic Relations Order. Pet.App.11a. That statement is completely contrary to the record. There has *never* been the slightest doubt as to the amount or form of benefits that were assigned to the Children. In fact, when the Children submitted their claims, it was the *Plans* who told the *Children* the form and amount of benefits they would recover if their claims were upheld. The reason why the Court of Appeals did not consider these undisputed facts is undoubtedly because the status of the Domestic Relations Order as a QDRO was not appealed and therefore not fully briefed.

CONCLUSION

This Court should grant Petitioners' motion for certiorari, reverse the decision of the Ninth Circuit Court of Appeals, and remand with instructions to affirm the decision of the District Court.

Alternatively, this Court should reverse the ruling of the Ninth Circuit Court of Appeals that a domestic relations order cannot divest a surviving spouse of the survivor annuity unless it specifically assigns the survivor annuity to a former spouse. It should then remand with instructions to schedule briefing and argument on the question of whether the Domestic Relations Order in this case is a QDRO.

Jerome C. Scowcroft
Counsel of Record
SCOWCROFT LAW OFFICES
11320 Roosevelt Way, N.E.
Seattle, WA 98125

(206) 365-5500

No. 04-35526, No. 04-35828, No. 04-35798

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DAVID HAMILTON; SARAH HAMILTON, a minor, Plaintiffs-Appellees, v. WASHINGTON STATE PLUMBING & PIPEFITTING INDUSTRY PENSION PLAN; PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND; WESTERN WASHINGTON U.A. SUPPLEMENTAL PENSION TRUST, Defendants-Appellants, MARY HAMILTON, Defendant-intervenor-Appellant. LINDA OPPEGAARD, guardian of Sarah Hamilton, Plaintiff, and DAVID HAMILTON; SARAH HAMILTON, a minor, Plaintiffs-counter-defendants-Appellees, v. PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND, Defendant-cross-defendant, MARY HAMILTON, Defendant-intervenor, and WASHINGTON STATE PLUMBING & PIPEFITTING INDUSTRY PENSION PLAN, Local Union # 32, Defendant-cross-defendant-Appellant. LINDA OPPEGAARD, guardian of Sarah Hamilton, Plaintiff, and DAVID HAMILTON; SARAH HAMILTON, a minor, Plaintiff-counter-defendants-Appellees, v. PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND, Defendant-cross-defendant-Appellant, and MARY HAMILTON, Defendant-intervenor.

October 17, 2005, Argued and Submitted, Seattle, Washington

January 10, 2006, Filed

COUNSEL: Ann E. Senter and Richard H. Robblee, Rinehart & Robblee, Seattle, Washington; Donald A. Cable and Neil A. Cable, Cable Langenbach Kinerk & Bauer LLP, Seattle, Washington, for the defendants-appellants.

Nicholas P. Scarpelli, Jr., Carney Badley & Spellman, P.S., Seattle, Washington; Jerome C. Scowcroft, Scowcroft Law Office, Seattle, Washington, for the plaintiffs-appellees.

Jonathan P. Meier, Sirianni Youtz Meier & Spoonemore, Seattle, Washington, for the defendant-intervenor-appellant.

JUDGES: Before: Richard D. Cudahy, * Thomas G. Nelson, and M. Margaret McKeown, Circuit Judges. Opinion by Judge McKeown.

OPINION BY: M. Margaret McKeown

OPINION: McKEOWN, Circuit Judge:

The alphabet soup world of pension benefits has spawned a dizzying array of acronyms, like ERISA, QDRO, and QPSA, and a complex web of interrelated statutory provisions. In a case of first impression, our challenge is to cut through the dense language to figure out what Congress meant in terms of surviving spouse benefits under the Employee Retirement Income Security Act of 1974 ("ERISA"), 88 Stat. 829 at 832, as amended, 29 U.S.C. § 1001 et seq.

In the case before us, two ERISA-governed pension funds, the Plumbers & Pipefitters National Pension

Fund (National Pension Fund) and the Washington State Plumbing & Pipefitting Industry Pension Plan for Local Union # 32 (State Plan) (collectively the "Plans"),[1] and Mary Hamilton, the surviving spouse of plan participant Michael Hamilton, appeal the district court's summary judgment and award of attorneys' fees to Michael's children from a previous marriage, David and Sarah Hamilton (the "Children"). After Michael's pre-retirement death, Mary and the Children claimed competing rights to survivor benefits. The district court found that the marital dissolution order, which required Michael to name the Children as beneficiaries under the Plans, was a valid Qualified Domestic Relations Order ("QDRO") under ERISA that took precedence over Mary's right to a Qualified Preretirement Survivor Annuity ("QPSA").

This scenario requires us to address the intersection between a surviving spouse's statutorily-guaranteed survivor annuity, a QPSA, and a marriage dissolution order, a QDRO, that is silent with respect to surviving spouse rights. Relying on the plain language of the statute, we hold that the purported assignment of pension rights did not meet the strict requirements of a QDRO. Even if the dissolution order is liberally construed as a QDRO, under the statutory language coupled with a complementary interpretation of the plans, the surviving spouse benefit must be explicitly assigned to a former spouse in a QDRO in order to overcome the surviving spouse's right to an annuity under ERISA. Consequently, Mary, the surviving spouse, prevails over the Children in this debate over statutory construction, plain language, and plan language, and we reverse the judgment of the district court.

BACKGROUND

The essential facts are not in dispute. Michael was a participant in the National Pension Fund, the State Plan and the Supplemental Plan. The Plans are defined benefit pension plans subject to the provisions of ERISA. Michael and his first wife, Linda Oppegaard, were divorced in April 1996. A marital dissolution order filed with the state court provided that, with regard to the Plans, Michael "shall name the children of the marriage, David and Sarah, as the beneficiaries under the pension in lieu of life insurance which he is presently unable to obtain, which obligation shall terminate when the youngest child reaches 18 years of age." The dissolution order made no reference to surviving spouse rights nor did it delineate which pension rights were at issue, the amounts to be paid or when the payments were to begin.

About two months after the divorce, Michael married Mary Hamilton. Soon after they were married, Michael named Mary as the beneficiary for death benefits payable under the National Pension Fund and State Plan.[2] Mary only asserts her rights to benefits as a result of her status as the "surviving spouse," not as the designated beneficiary. Michael died in a car accident in 2002 at the age of 49. At the time of his death, he was still married to Mary and both Children were under the age of 18. He was a fully vested participant in the Plans, had not yet retired and was not receiving pension benefits.

The Plans provide that if a vested participant dies before retirement, benefits will be paid to a surviving spouse *or*, in the event that such surviving spouse

benefits are not payable, a lump sum death benefit will be paid to another beneficiary designated by the plan participant. Once Mary asserted rights to surviving spouse benefits under the Plans, the Children asserted competing rights on the ground that the marital dissolution order entitled them to benefits. The National Pension Fund and the State Plan denied the Children's claims, reasoning that Mary was entitled to a surviving spouse benefit under ERISA. The Supplemental Plan took no position on the merits of the claims.

In the course of the inevitable litigation over this clash of rights, the district court granted summary judgment to the Children and entered a judgment in their favor in an amount totalling the contributions made to the Plans on Michael's behalf. The district court determined that the Plans' respective denials of the Children's claims were arbitrary and capricious because the dissolution decree was a valid QDRO under ERISA, and the designation of the Children as "alternate payees" in the QDRO took precedence over Mary's right as the surviving spouse. The court also awarded the Children attorneys' fees, costs, and prejudgment interest pursuant to 29 U.S.C. § 1132(g)(1).

ANALYSIS

I. STATUTORY FRAMEWORK

Congress enacted ERISA to ensure the proper administration of employee benefit plans, including pension plans, both during the years of an employee's active service and after retirement. *See Boggs v. Boggs*, 520 U.S. 833, 839, 117 S. Ct. 1754, 138 L. Ed. 2d 45

(1997). The principal object of ERISA is to "protect plan participants and beneficiaries." *Id.* at 845 (citing *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90, 103 S. Ct. 2890, 77 L. Ed. 2d 490 (1983) ("ERISA is a comprehensive statute designed to promote the interests of employees and their beneficiaries in employment benefit plans")); *see also* 29 U.S.C. § 1001(b) (stating that the policy of ERISA is to "protect . . . the interest of participants in employee benefit plans and their beneficiaries"). To this end, ERISA requires pension plans to conform to a myriad of reporting, disclosure, participation, vesting and funding requirements. *See* 29 U.S.C. §§ 1021-1031, 1101-1114, 1051-1086.

The Retirement Equity Act of 1984 ("REA"), Pub.L. 98-397, 98 Stat. 1426, amended ERISA in two important ways with respect to surviving spouses. REA first sought to "ensure a stream of income" to surviving spouses by requiring pension plans to provide automatic surviving spouse benefits. *Boggs*, 520 U.S. at 843. Section 1055, as amended by REA, provides that if a vested participant dies before the annuity start date, leaving a surviving spouse to whom he has been married for at least one year, "a qualified preretirement survivor annuity [QPSA] shall be provided to the surviving spouse."[3] 29 U.S.C. § 1055(a)(2). The QPSA is an annuity for the life of the surviving spouse that must be at least fifty percent of the annuity amount which would have been payable during the joint lives of the participant and spouse. *Id.* at § 1055(e)(2). Provision of the QPSA may be waived by the participant only if the spouse consents in writing to the designation of another beneficiary. *Id.* at § 1055(c)(2).[4] Applying these provisions to the case at hand, it is undisputed that Mary was Michael's "surviving spouse" at the time of

his death, and Mary never consented to the designation of another beneficiary.

REA also introduced the QDRO exception, *id.* at § 1056(d), which "elevates a plan participant's legal obligations, commonly to a former spouse or children of a previous marriage, over the participant's express wishes to provide for other individuals as designated beneficiaries." *Trustees of the Directors Guild of America-Producer Pension Benefits Plans v. Tise*, 234 F.3d 415, 425 (9th Cir. 2000). The QDRO is a subset of "domestic relations orders" that recognizes the right of an alternate payee to "receive all or a portion of the benefits payable with respect to a participant under the plan." 29 U.S.C. § 1056(d)(3)(B)(i)(I). If a domestic relations order qualifies as a QDRO, the designated alternate payee--"any spouse, former spouse, child, or other dependent of a participant"--shall be considered "a beneficiary under the plan." *Id.* at §§ 1056(d)(3)(J)-(K). "Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order." *Id.* at § 1056(d)(3)(A).

In addition, the statute specifically contemplates the assignment of surviving spouse rights (i.e., a QPSA) to a "former spouse" in a QDRO:

To the extent provided in any qualified domestic relations order—

> (i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 1055 of this title (and any

> spouse of the participant shall not be treated as a spouse of the participant for such purposes)

Id. at § 1056(d)(3)(F)(i) (emphasis added). In crafting the QDRO exception, "Congress resolved any uncertainty concerning the authority of state courts to adjudicate marital dissolutions and to affect ERISA pension plan benefits."[5] *See Stewart v. Thorpe Holding Co. Profit Sharing Plan*, 207 F.3d 1143, 1149 (9th Cir. 2000).

Together, the surviving spouse and QDRO provisions "are essential to one of REA's central purposes, which is to give enhanced protection to the spouse and dependent children in the event of divorce or separation, and in the event of death, the surviving spouse." *Boggs*, 520 U.S. at 847. Apart from these detailed provisions, ERISA does not confer beneficiary status on nonparticipants by reason of their marital or dependent status. *Id.*

II. QDRO ANALYSIS

Without a doubt, the details required in a QDRO present a drafting morass for the lawyer. We recognize the concern expressed by courts and commentators that the failure of domestic relations lawyers to "navigate the treacherous shoals" of ERISA may harm potential beneficiaries. *Metropolitan Life Ins. Co. v. Wheaton*, 42 F.3d 1080 (7th Cir. 1994) (noting that "ideally, every domestic relations lawyer should be conversant with ERISA, but it is unrealistic to expect all of them to be"); *see also* Daniel N. Janich, *When Remarriage Muddies the Waters*, 24 FAMILY ADVOCATE 39 (2000) ("Unfortunately, failure to

include a survivorship provision in the QDRO often goes undetected until the participant dies or retires, that is, when the survivor benefits irrevocably vest in the current spouse and it is too late to do anything about it."). Despite these drafting pitfalls, Congress "required that QDROs be specific and clear" because it was "concerned with reducing the expense to plan providers and protecting them from suits for making improper payments." *In re Gendreau*, 122 F.3d 815, 817-18 (9th Cir. 1997). The mandated specificity makes sense so that a pension plan is on notice of its exact obligations to a payee other than a plan participant. In practical terms, a well crafted QDRO could avoid precisely the clash of claims presented here.

A domestic relations order[6] qualifies as a QDRO only if it meets the "specificity" requirements set forth in § 1056(d)(3)(C): (1) the order must specify the name and mailing address of the alternate payee and the affected plan participant, (2) the amount or percentage of the participant's benefits to be paid or the means by which that amount will be determined, (3) the number of payments or time period to which the order applies, and (4) each plan to which the order applies. In addition, under § 1056(d)(3)(D), a QDRO must *not* (1) require the plan to provide any type of benefit not otherwise provided, (2) require the plan to provide increased benefits, or (3) require benefits to be paid to an alternate payee which must be paid to another alternate payee under another QDRO.[7]

We require substantial compliance with these requirements, *Tise*, 234 F.3d at 420, and have rejected an unduly narrow reading of these requirements. *Stewart*, 207 F.3d at 1155 (recognizing that such a

reading may frustrate Congressional purposes "by making it *unreasonably difficult* for domestic relations orders to qualify as QDROs") (quoting *Hawkins v. Commissioner of Internal Revenue*, 86 F.3d 982, 991 (10th Cir. 1996) (emphasis added)). We have, however, also echoed the Tenth Circuit's concerns that an overly expansive interpretation may render the specificity requirements toothless. *Stewart*, 207 F.3d at 1155 (rejecting the suggestion that ERISA's specificity requirements may be eliminated altogether in certain cases); *Hawkins*, 86 F.3d at 992 ("Nowhere . . . has Congress implied that its factual requirements are optional"). The pivotal question is whether the dissolution order "clearly contains the information specified in the statute that a plan administrator would need to make an informed decision." *Stewart*, 207 F.3d at 1154 (internal quotation marks omitted). Here, the paucity of relevant information in the dissolution order compels a negative answer.

Exhibit A to the Decree of Dissolution is a list of property to be distributed to the husband. The only mention of the children and the pension is the cryptic reference with respect to each pension plan that the husband "shall name the children of the marriage, David and Sarah, as the beneficiaries under the pension in lieu of life insurance which he is presently unable to obtain, which obligation shall terminate when the youngest child reaches 18 years of age."

As the Plans pointed out in rejecting the Children's claim, the order requires the husband to designate the Children as beneficiaries but does not require any action by the Plans, does not assign death benefits to the Children, and does not specify when payments

begin or the amount, calculation, or form of the payments.[8] Nor does the order deal with the issue of the surviving spouse annuity.

The required details are not hypothetical hurdles. Under the Plans, before the Children reached maturity, Michael or his qualified beneficiary was potentially eligible for a variety of pension benefits, such as a disability pension, an early retirement pension, death benefits and survivor benefits. The dissolution order neither lays out what pension benefits are at issue nor allocates payment of the benefits.

The district court determined that the references in the dissolution order met the requirements for a QDRO. On appeal, the Plans argue that "QDRO or no QDRO," the statute mandates payment to the surviving spouse. The dissolution order did not, in our view, qualify as a QDRO. Nonetheless, because of the ambiguity of the Plans' position on appeal--that is, whether they actually challenge the district court's finding--we give the Children the benefit of the doubt and proceed with the analysis under the statute. Absent a QDRO, the Children would not even be in a position to parse the statutory provisions.

III. STATUTORY INTERPLAY BETWEEN QDROS AND SURVIVOR BENEFITS

The Plans and Mary argue that under ERISA, a QDRO can divest a surviving spouse of her statutorily-guaranteed right to a QPSA only if the QDRO expressly assigns surviving spouse rights to a former spouse. *See* 29 U.S.C. § 1056(d)(3)(F). This is a question of first impression in this circuit.

"In interpreting the statutes in question, 'our task is to construe what Congress has enacted. We begin, as always, with the language of the statute.'" *Navajo Nation v. Dep't Health & Human Services*, 325 F.3d 1133 (9th Cir. 2003) (en banc) (quoting *Duncan v. Walker*, 533 U.S. 167, 172, 121 S. Ct. 2120, 150 L. Ed. 2d 251 (2001)). When looking to the plain language of a statute, "we do more than view words or subsections in isolation. We derive meaning from context, and this requires reading the relevant statutory provisions as a whole." *Cal. ex rel. Lockyer v. F.E.R.C.*, 383 F.3d 1006, 1016 (9th Cir. 2004) (internal quotation marks omitted).

Under ERISA, "a qualified preretirement survivor annuity [QPSA] *shall be provided* to the surviving spouse," 29 U.S.C. § 1055(a)(2) (emphasis added), absent one exception--spousal consent to waiver of the benefit, *id.* at § 1055(c)(2). As the Supreme Court observed in *Boggs*, congressional concern for the "economic security of surviving spouses," is evident from the "expansive coverage of § 1055's" requirements, which apply to all individual account plans and defined benefit plans, *see* 29 U.S.C. § 1055(b)(1), and the requirement of spousal consent, which prevents "even a plan participant [from] defeating a nonparticipant surviving spouse's statutory entitlement to an annuity." Boggs, 520 U.S. at 843.

Section 1055 must be read in conjunction with § 1056(d)(3)(F), which provides that "to the extent provided in any qualified domestic relations order," surviving spouse rights may be assigned to a "former spouse." The ordinary interpretation of the phrase "to the extent provided" means that any assignment of surviving spouse rights in a QDRO must be explicit, rather than implicit. In other words, any effort to

alienate surviving spouse rights in advance must be spelled out in the QDRO. The provision also makes clear that surviving spouse rights must be assigned to a "former spouse." By statutory fiat, a former spouse can be treated as "the surviving spouse" in this limited circumstance. But the bottom line is that the survivor spouse annuity is payable only to the individual qualifying as a "surviving spouse" or "former spouse."

The Children argue that § 1056(d)(3)(F) does not exhaustively delineate how a QDRO can assign surviving spouse rights, but instead exemplifies one particular scenario: where the "alternate payee" happens to be a "former spouse." The Children urge that *their* QDRO is not governed by the language of § 1056(d)(3)(F). To accept this argument, we would have to assume that while Congress intended for there to be multiple ways to assign surviving spouse rights in a QDRO--e.g., to children as well as to a former spouse--the legislature decided to reference explicitly only one of those ways in § 1056(d)(3)(F)--the former spouse scenario--and leave us guessing about the rest--e.g., the children scenario. Such an interpretation is not only unlikely given the comprehensive nature of the QDRO provision, but it is also at odds with the mandatory language and strict spousal consent provisions of § 1055. Together these provisions make clear that Congress intended to tightly circumscribe exceptions to the mandatory surviving spouse annuity.

Although § 1056(d)(3)(A) requires a pension plan to "provide for the payment of benefits in accordance with the applicable requirements of any [QDRO]," this directive does not change our conclusion. Section 1056(d)(3)(A) cannot be read in isolation as the Children

suggest. A QDRO must generally be enforced, it is true. But it may intrude on a surviving spouse's preretirement annuity only in the specific manner set forth in § 1056(d)(3)(F). Giving meaning to the plain language of the statute, we conclude that Mary cannot be divested of her right to a QPSA under § 1055 unless the QDRO explicitly assigned those rights to a former spouse.[9] Here, the purported QDRO did not do so.

Although the Supreme Court has not addressed the precise issue here, our interpretation follows the logic of *Boggs*. In *Boggs*, the Supreme Court held that ERISA prohibited a non-participant spouse from making a testamentary transfer of her interest in undistributed pension plan benefits to her sons. *Boggs*, 520 U.S. at 844. The Court explained that "ERISA's silence with respect to the right of a nonparticipant spouse to control pension plan benefits by testamentary transfer provides powerful support for the conclusion that the right does not exist." *Id.* at 843, 847-48. The Court went on to note that "ERISA's solicitude for the economic security of surviving spouses would be undermined by allowing a predeceasing spouse's heirs and legatees to have a community property interest in the survivor's annuity." *Id.* at 843. To be sure, a testamentary transfer is not a QDRO. *See Ablamis v. Roper*, 937 F.2d 1450, 1455 (9th Cir. 1991). In light of the comprehensive nature of the QDRO provision, ERISA's silence as to the ability of a QDRO to override a surviving spouse's QPSA--except as set forth in § 1056(d)(3)(F)--supports the view that § 1056(d)(3)(F) is the exclusive override method, not merely illustrative, as urged by the Children.[10]

Our reading of the statute is also consistent with the

interpretation of other circuits. In *Dorn v. IBEW*, 211 F.3d 938, 941 n.5 and 947 (5th Cir. 2000), the Fifth Circuit concluded that while a QDRO entitled a former spouse to a portion of her ex-husband's monthly pension annuity during his lifetime, she was not entitled to a survivor's annuity under ERISA because "the domestic order nowhere designates her as the surviving or 'qualified' spouse for purposes of any survivor benefit." The Third Circuit explained in *Samaroo v. Samaroo*, 193 F.3d 185, 187 n.2 (3rd Cir. 1999), that the terms of a divorce decree were insufficient to entitle a participant's ex-wife to a preretirement surviving spouse annuity because the decree "was silent on the issue of survivor's rights." We acknowledge that these cases did not address a conflict between children of a former marriage and a surviving spouse. Like us, however, these circuits have interpreted the statute to require an explicit assignment of surviving spouse rights in a QDRO; a general designation of an alternate payee as a pension beneficiary does not serve to designate surviving spouse benefits.

It bears noting that our interpretation is consistent with Department of Labor (DOL) and Internal Revenue Service (IRS) publications that provide guidance in the drafting of QDROs.[11] The DOL has explained:

> A QDRO may provide for treatment of a former spouse of a participant as the participant's spouse with respect to all or a portion of the spousal survivor benefits that must be provided under Federal law. . . . Only a spouse or former spouse of the participant can be treated as a

> spouse under a QDRO. A child or other dependent who is an alternate payee under a QDRO cannot be treated as the spouse of a participant.

DOL, *Appendix D--Drafting a Qualified QDRO, in* QDROS: THE DIVISION OF PENSIONS THROUGH QUALIFIED DOMESTIC RELATIONS ORDERS (Dec. 2005), *available at* http://www.dol.gov/ebsa/publications/qdros_appD.html ("DOL Guide"). The IRS offers an identical interpretation, namely that the QDRO can name only a spouse or former spouse as a beneficiary of spousal survivor rights. 1997-2 I.R.B. 49, IRS Notice 97-11, 1996 WL 747904 at app., pt. 1, § E (1997) ("IRS Notice"). Both agencies recommend that the following express language designating surviving spouse rights be included in a QDRO to effectuate the assignment of those rights to an alternate payee: "The Alternate Payee shall be treated as the Participant's spouse under the Plan for purposes of §§ 401(a)(11) and 417[12] of the Code." *Id.* at app., pt. 2, § E; DOL Guide. The agencies also caution that such an alternate payee must be a "spouse" and not a "child or other dependant of the Participant." *Id.*

Our interpretation does not render the QDRO's assignment of benefits to the Children illusory. If Michael had not remarried, or had he and Mary been married for less than a year prior to his death, the Children would have been entitled to death benefits under the terms of the Plans. Alternatively, if Michael had waived provision of the survivor spouse annuity with Mary's consent pursuant to § 1055(c)(2), the Children would have been eligible for death benefits.

Perhaps the most effective way of ensuring the Children's receipt of benefits in the event of Michael's pre-retirement death (if this, in fact, was the parties' intention at the time of divorce) would have been to assign surviving spouse rights to Michael's former spouse in a QDRO, and she in turn could have transferred those benefits to the Children.

In short, designating children in a QDRO as alternate payees under a pension plan can provide a myriad of potential benefits to the children, depending on their ages, the date of the participant's disability, retirement, or death, and the participant's marital status. But as to a preretirement surviving spouse annuity, ERISA does not permit children to be designated as alternate payees in a QDRO. Only the surviving spouse (or a former spouse properly designated) is eligible for those benefits.

The Children cite a number of cases in which courts have awarded life insurance proceeds to the alternate payee (children or former spouse) named in a QDRO over the competing claims of the participant's widow, absent an express designation of surviving spouse rights. *See Metropolitan Life Insurance Co. v.* Marsh, 119 F.3d 415, 422 (6th Cir. 1997); *Metropolitan Life Ins. Co. v. Wheaton*, 42 F.3d 1080, 1085 (7th Cir. 1994); *Carland v. Metropolitan Life Ins. Co.*, 935 F.2d 1114, 1121 (10th Cir. 1991). These cases are inapposite because life insurance policies are not subject to § 1055's surviving spouse provisions, *see* § 1055(b) ("This section shall apply to . . . any defined benefit plan [and] any individual account plan . . ."). The widows in these cases each claimed benefits as a named beneficiary under the life insurance policy, not as a surviving

spouse under § 1055. Thus, the analysis in these cases does not alter our conclusion.

IV. INTERPRETATION OF THE PLANS

Our interpretation of the effect of ERISA's requirements for payment of benefits under a QPSA also tracks the Plans' provisions and the plan administrators' interpretations of that language, which are entitled to deference. *See Nord v. Black & Decker Disability Plan*, 356 F.3d 1008, 1010 (9th Cir. 2004) (holding that a plan administrator's determinations are reviewed for an abuse of discretion where a plan gives the administrator discretionary authority to construe the terms of the plan).[13] We must uphold the plan administrators' decisions to deny the Children lump sum death benefits if they are based upon a reasonable interpretation of the plan's terms and made in good faith. *McDaniel v. The Chevron Corporation*, 203 F.3d 1099, 1113 (9th Cir. 2000). Of course, because the Plans require conformance with ERISA, this review collapses, in practical terms, into a de novo review.

Here, the Plans' provisions are clear that, in the event of a Participant's *pre-retirement* death, if a surviving spouse is entitled to an annuity then no lump sum death benefits are payable to the designated beneficiary.[14] Section 7.01 of the National Pension Fund provides:

> [A] Lump Sum Death Benefit equal to the contributions made by his Employers on his behalf shall be paid to his designated Beneficiary. However, if a Preretirement Surviving Spouse Pension is payable under Section 6.03, no Death Benefit will be paid under this Section, unless

> the Participant's surviving Spouse elects to receive it in accordance with Section 6.03(d). In any event, no benefits shall otherwise be payable under this Section if a Preretirement Surviving Spouse Pension is payable to the Spouse of the Participant under Section 6.03.

Similarly, §§ 7.03 and 7.05 of the State Plan provide:

> If a Participant is Vested and dies before retirement benefits commence . . . and no beneficiary of his is eligible for benefit payments under Section 7.01 [the Pre-Retirement Surviving Spouse Annuity] . . . , then his designated Beneficiary shall receive a lump sum death benefit. . . .
>
> [A] lump sum death benefit . . . shall be paid as a result of [participant's] death if he dies before the date retirement benefits commence . . . provided, however, if the Participant is less than 55 years of age at his death, and if his surviving spouse will receive a Pre-Retirement Annuity Benefit under the terms of Section 7.01, then no lump sum death benefit shall be paid under this paragraph as a result of the death of the Participant.

It is undisputed that Mary Hamilton meets the requirements for a preretirement surviving spouse annuity. Thus, the plan administrators' decisions to deny the Children lump sum death benefits were based on a reasonable interpretation of the plan language, and the district court erred in concluding that the decisions were arbitrary and capricious.

The Children point specifically to Article 6, § 6.05 of the National Pension Fund plan, which states that "any rights of a former Spouse or other alternate payee under a Qualified Domestic Relations Order, with respect to a Participant's pension, shall take precedence over those of any later Spouse or the Participant under this Article." The district court also relied on § 6.05 in determining that the National Pension Fund, by its own terms, was not obligated to pay Mary where a QDRO conferred rights on an alternate payee.

The difficulty with this interpretation is that it does not take into account that the term "Spouse" is a defined term in the Plan and is distinguished from "Qualified Spouse," another term used in Article 6. Section 6.01 defines "Spouse" and "Qualified Spouse." Throughout Article 6, the Plan distinguishes between use of the terms. For example, § 6.01(a) provides that, in general, a pension will be paid as a "50% Husband and Wife Pension" unless "the Participant and *Spouse* elect otherwise" or "the *Spouse* is not a *Qualified Spouse.*" (emphasis added.)

Section 6.05 cannot be read to trump the rights of a "Qualified Spouse" as it expressly employs the term "Spouse." Nor can it be read to mean that if the Children are deemed alternate payees, thus allowing them to defeat the rights of a later, *un*-Qualified "Spouse," that their rights take precedence over a Qualified Spouse's entitlement to a preretirement surviving spouse annuity. Section 6.03, the QPSA section, speaks only to the rights of a "Qualified Spouse." Because Mary was married to Michael "throughout the twelve months" before "the date of

death," she is deemed a "Qualified Spouse," and the designation of the Children as alternate payees would not trump her rights.

The National Pension Fund points out that § 6.05 cannot be read in isolation, but must be read in conjunction with § 7.01, which states that no lump sum death benefits will be payable "if a Preretirement Surviving Spouse Pension is payable," and § 6.01(d), which states that "[a] former spouse is a 'Qualified Spouse' if . . . the former Spouse is required to be treated as a Spouse or Surviving Spouse under a Qualified Domestic Relations Order." The Fund contends that this reading is consistent with § 1056(d)(3)(F) of ERISA, which requires a QPSA to be paid to the surviving spouse unless a QDRO expressly assigns surviving spouse rights to a "former spouse."[15] Not only do we determine this interpretation to be reasonable, but in this case, it is the only plan interpretation consistent with ERISA's requirements.

We conclude that a surviving spouse benefit must be explicitly assigned to a former spouse in a QDRO in order to overcome the surviving spouse's right to a QPSA under ERISA. The plan administrators' decisions to deny the Children benefits were based on reasonable interpretations of the Plans' terms, and the district court erred in granting summary judgment to the Children. We reverse the award of summary judgment, attorneys' fees,[16] costs, and prejudgment interest to the Children and remand this case to the district court for proceedings consistent with this opinion.

REVERSED and REMANDED .

Footnotes

* The Honorable Richard D. Cudahy, Senior United States Circuit Judge for the Seventh Circuit, sitting by designation.

n1 The Children and Mary Hamilton also assert competing claims to benefits under a third plan, the Supplemental Pension Plan for Washington State Plumbing and Pipefitting Industry Pension Plan for Local Union # 32 (the "Supplemental Plan"). Although the Supplemental Plan was a named defendant in the underlying suit, it did not appeal the district court's judgment. The district court noted that the Supplemental Plan "does not take a position on the merits of this action and agrees to pay the prevailing party."

n2 The record does not reflect whether Mary Hamilton was the named beneficiary under the Supplemental Plan.

n3 Section 1055(a)(1) states that "in the case of a vested participant who does *not* die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity" (emphasis added). This provision, known as the "QJSA" provision, does not apply here because Michael died prior to the annuity starting date.

n4 The survivor's annuity may be waived without spousal consent if "it is established to the satisfaction of a plan representative" that "there is no spouse, because the spouse cannot be located, or because of other such

circumstances as the Secretary of the Treasury may by regulations prescribe." *Id.* at § 1055(c)(2)(B).

n5 QDROs, unlike domestic relations orders in general, are exempt both from ERISA's anti-alienation provision, 29 U.S.C. § 1056(d)(1) ("Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated"), and ERISA's broad preemption of state law, 29 U.S.C. § 1144(b)(7).

n6 A "domestic relations order" is defined as any "judgment, decree or order" concerning "the provision for child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent of a participant" that is "made pursuant to a State domestic relations law (including a community property law)." *Id.* at § 1056(d)(3)(B)(ii)(I)-(II).

n7 The issue of whether a domestic relations order meets the statutory requirements of a QDRO, and therefore is enforceable against the pension plan, is determined in the first instance by the pension plan administrator, and, if necessary, by a court of competent jurisdiction. *See* Tise, 234 F.3d at 421; *see also* 29 U.S.C. § 1056(d)(3)(H)(I).

n8 The Plans also point out that the dissolution order does not identify the Children as "Alternate Payees" under the Plans. This deficiency alone would not have posed a particular hurdle to finding a valid QDRO. *See Hawkins*, 86 F.3d at 990 (explaining that even though the participant's former spouse was not "specifically designated" as an alternate payee in the QDRO, she

clearly "come[s] within the statutory definition of an 'alternate payee'").

n9 In a similar vein, the Children argue that § 1056(d)(3)(F) should be read as an extension of § 1056(d)(3)(C)'s specificity requirements, applicable to one particular scenario: where the "alternate payee" happens to be a "former spouse." As noted earlier, the "specificity requirements" for a QDRO are set forth in § 1056(d)(3)(C), which provides that "[a] *domestic relations order* meets the requirements of this subparagraph only if such order clearly specifies . . ." (emphasis added). By contrast, the language of § 1056(d)(3)(F) already assumes that a valid QDRO exists: "To the extent provided in *any qualified domestic relations order* . . ." (emphasis added). Thus, while § 1056(d)(3)(F) does not technically set forth another specificity requirement for a *potential* QDRO, it does require a valid QDRO to *specifically* assign surviving spouse rights.

These provisions are best viewed as a series of separate hurdles. The first hurdle is subsection C's specificity requirements, which apply no matter what type of pension right is being assigned in a dissolution order. But if parties to a dissolution order seek to assign surviving spouse rights, then the second hurdle-- § 1056(d)(3)(F)--comes into play. Ultimately, the question remains the same: whether Congress intended for the second hurdle to apply whenever surviving spouse rights were at issue. We conclude that Congress did.

n10 The Third Circuit in *McGowan v. NJR Service Corporation* recently applied *Boggs*'s reasoning in a similar fashion to conclude that the QDRO exception to

ERISA's anti-alienation provision "is to be narrowly construed" and does not permit the alienation of benefits through waiver:

> Applying [Boggs's] reasoning to the case at hand, ERISA's silence with respect to the right to waive benefits supports the conclusion that such a right does not exist. The comprehensive nature of the QDRO provision suggests that Congress provided only one option to individuals in McGowan's position. In other words, the QDRO provision, which . . . give[s] rise to the strong implication that the designation of alternate payees under other circumstances (i.e., through waivers) is not consistent with the statutory scheme.

423 F.3d 241 (3rd Cir. 2005) at 249-50 (internal quotation marks omitted).

n11 The QDRO exception is codified both in the labor code and the tax code. Because "the two parallel provisions were created by the same legislative act and contain precisely the same language, they are interpreted identically." *Hawkins*, 86 F.3d at 988 n.5; *see also* I.R.C. § 401(a)(13)(B) (2005); 29 U.S.C. § 1056(d)(3).

n12 Sections 401(a)(11) and 417 of the tax code are analogous to the surviving spouse provisions in the labor code, 29 U.S.C. § 1055.

n13 The Children do not dispute that the Plans give their respective plan administrators discretionary authority to interpret plan terms, nor do they contend

that a serious conflict of interest affected the plan administrators' decisions which would merit de novo review. *See Atwood v. Newmont Gold Co., Inc.*, 45 F.3d 1317, 1322-23 (9th Cir. 1995).

n14 Section 7.8 of the Supplemental Plan provides:

> *Beneficiaries.* A Participant may designate a Beneficiary to receive any amount payable upon the Participant's death, subject to the following rules:
>
> (a) Rules applying to all designations
>
> . . .
>
> (2) For a married Participant the designation of a Beneficiary other than the Participant's spouse shall require the spouse's consent . . .

n15 The Fund provides substantial guidance with respect to QDRO drafting and coverage. Its brochure provides the following detailed information with respect to preretirement spouse benefits:

> The parties should note that if the Alternate Payee is named as the Surviving Spouse for the Participant's entire benefit, any subsequent spouse of the Participant will receive no benefits upon the Participant's death. The parties should also note that if the Alternate Payee is not designated as a Surviving Spouse for at least some portion of the Participant's benefit, nothing will be payable to the Alternate Payee after the

> Participant's death. *For example, if the QDRO does not provide that the Alternate Payee is to be the Participant's surviving spouse for the Preretirement Surviving Spouse Pension, and if the Participant dies before the Alternate Payee has begun receiving a benefit, no benefits will be paid under the QDRO.*

The advice is unambiguous. (emphasis added.)

n16 Under 29 U.S.C. § 1132(g), a court may, in its discretion, award attorneys' fees and costs "to either party;" however, attorneys' fees and costs under § 1132(g) are ordinarily recovered by the prevailing party. *See Honolulu Joint Apprenticeship and Training Committee of United Association*, 332 F.3d 1234, 1239 (9th Cir. 2003).

Filed 5/13/2004
No. C03-2438Z

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DAVID HAMILTON, et al.,
Plaintiffs,

v.

PLUMBERS AND PIPEFITTERS NATIONAL PENSION FUND, et al.,
Defendants

MARY HAMILTON,
intervenor defendant and cross-claimant.

ORDER

This matter comes before the Court on Plaintiffs' Motion for Summary Judgment, docket no. 25, Intervenor Mary Hamilton's Cross-Motion for Summary Judgment, docket no. 45, and Defendant Plumbers and Pipefitters National Pension Fund's (the "National Pension Fund") Cross-Motion for Summary Judgment, docket no. 50. The Washington State Plumbing and Pipefitting Industry Pension Plan for Local Union #32 (the "State Plan") joins the National Pension Fund's opposition to Plaintiffs' Motion for Summary Judgment and Cross-Motion for Summary Judgment. Docket no. 55. The Supplemental Pension Plan for Washington State Plumbing and Pipefitting Industry Pension Plan for Local Union #32 (the "Supplemental Plan") does not take a position on the

merits and agrees to pay the prevailing party. Docket no. 54.

Having considered the briefs in support of and in opposition to the motions, and the oral argument of counsel on April 16, 2004, the Court now GRANTS Plaintiffs' Motion for Summary Judgment, docket no. 25, DENIES Intervenor Mary Hamilton's Cross-Motion for Summary Judgment, docket no. 45, DENIES Defendant National Pension Fund's Cross-Motion for Summary Judgment, docket no. 50, and DENIES Defendant State Plan's Joinder in Defendant National Pension Fund's Cross-Motion for Summary Judgment, docket no. 55.[1]

BACKGROUND

Present Lawsuit and Parties

Plaintiffs bring this case pursuant to the civil enforcement provision of the Employees Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1132(a). Plaintiffs are two children, David Hamilton and Sarah Hamilton (the "Children"), who claim the right to benefits under three ERISA-governed pension plans as a result of the death of their father, Michael Hamilton, a participant in each of the pension plans. Defendants, who administer the pension plans, are the National Pension Fund, the State Plan, and the Supplemental Plan (collectively the "Plans").

The Children's claim is based upon a provision in a domestic relations order between their father, Michael Hamilton, and their mother, Linda Oppeggard, which required Michael Hamilton to name David and Sarah as

the beneficiaries under each of the Plans. The Children seek the following lump sum payments from the Plans:

The National Pension Fund	$62,425.00
The State Plan	$97,163.82
The Supplemental Plan	$81,862.69
TOTAL	$241,451.51

See Saichek Decl., docket no. 58 (part 2),113-5, Exs. A at 2, B at 1, and C at 1.

Mary Hamilton, Michael Hamilton's wife at the time of his death but not the mother of the Children, has intervened in the action to assert competing claims against the Plans. See Stipulation and Order, docket no. 13. The mother of the Children, Linda Oppeggard, is not a party to this action.

Michael Hamilton's Marriage to Linda Oppegard and the Subsequent Divorce

Michael Hamilton married Linda Oppegard on December 4, 1982. During their marriage, Michael and Linda Hamilton had two children: David, born August 1, 1984, and Sarah, born November 12, 1989. Scowcroft Decl., docket no. 27, Ex. 2 (13.1) and Ex. 3 (13. 1). Michael and Linda Hamilton were divorced on April 3, 1996. Scowcroft Decl., Ex. 1. A domestic relations order (the "Domestic Relations Order") was filed with the King County Superior Court on April 3, 1996, under In re the Marriage of Linda Rose Hamilton Petitioner,.and Michael L. Hamilton, Respondent, Cause No. 95-3-00819-8, consisting of a Decree of Dissolution of Marriage (the "Dissolution Decree") and an Order of Child Support (the "Child Support Order"). Scowcroft

Decl., In 3-4, Exs.1 and 2.[2]

The Dissolution Decree includes Exhibits A and B that describe property awarded to the husband and wife, respectively. Id., Ex. 1. The Children's claim to pension benefits is based upon the following provisions on page 1 of Exhibit A to the Dissolution Decree regarding each of the Plans:

3. Plumbers and Pipefitters National Pension Fund for Local Union #32. The Husband shall name the children of the marriage, David and Sarah, as the beneficiaries under the pension in lieu of life insurance which he is presently unable to obtain, which obligation shall terminate when the youngest child reaches 18 years of age.

4. Washington State Plumbing and Pipefitting Industry Pension for Local Union #32. The Husband shall name the children of the marriage, David and Sarah, as the beneficiaries under the pension in lieu of life insurance which he is presently unable to obtain, which obligation shall terminate when the youngest child reaches 18 years of age.

5. Local Union #32 Supplemental Pension Plan. The Husband shall name the children of the marriage, David and Sarah, as the beneficiaries under the pension in lieu of life insurance which he is presently unable to obtain, which obligation shall terminate when the youngest child reaches 18 years of age.

See Scowcroft Decl., Ex. l, Ex. A.
Michael Hamilton died on June 10, 2002 at the age of 49 years and ten months. Robinson Decl, docket no. 53,

Par. 5. At the time of Michael Hamilton's death, both his children, David and Sarah, were under the age of 18. See Scowcroft Decl., Ex. 2 (Par. 3.1) and Ex. 3 (Par. 3. 1). As a result, under the above-quoted provisions of the Dissolution Decree, Michael Hamilton was obliged at the time of his death to have had the Children named as "the beneficiaries" under each of the Plans.

Michael Hamilton's Marriage to Mary Hamilton and her Designation as Beneficiary

On June 10, 1996, Michael Hamilton married Mary Hamilton. Robinson Decl. Par. 5. On June 17, 1996, Michael Hamilton named Mary Hamilton as the beneficiary for death benefits payable under the National Pension Fund and the State Plan. See Robinson Decl., Ex. 6 at 2; Cable Decl., docket no. 57, Ex. A at 3. It is unknown whether Mary Hamilton was the narned beneficiary under the Supplemental Plan. Whether Mary Hamilton was the named beneficiary or not under any of the Plans is of no consequence to the outcome of this case because she does not assert any rights to benefits as a result of such a designation; she only asserts her rights to benefits as a result of her status as the surviving spouse. Michael Hamilton was still married to Mary Hamilton when he died.

National Pension Fund

The National Pension Fund is a defined benefit fund, which means that it collects contributions from employers and, in exchange, promises to pay a particular pension benefit amount specified in the Plumbers and Pipefitters National Pension Plan (the "National Plan"). Robinson Decl. Par. 3, Ex. l. In

contrast, a defined contribution plan maintains individual accounts for each participant. See id.

Michael Hamilton was a Participant in the National Pension Fund. See Section 2(7) of ERISA, 29 U.S.C. § 1002(7) (defining "Participant"); see also Section 1.14 of the National Plan, Robinson Decl., Ex. I at 44 (same). At the time of his death on June 10, 2002, Michael Hamilton was not retired and was not receiving any pension benefits from the National Pension Fund. Robinson Decl. Par. 5.

In a letter dated July 18, 2002, the National Pension Fund's Office (the "Fund Office") advised Mary Hamilton that as the surviving spouse of Michael Hamilton, she might be entitled to receive benefits from the Fund. Id. Par. 6, Ex. 2. On July 26, 2002, Mary Hamilton returned her Application for Benefits to the Fund Office. Id Par. 7. In a letter dated July 30, 2002, the Fund Office acknowledged Mary Hamilton's application for a Preretirement Surviving Spouse Pension under Section 6.03 of the National Plan, and established her Effective Date of Benefits as August 1, 2002. Id. Par. 8. Ex. 3.

Article 6 of the National Plan is entitled "Normal Forms of Pension." Robinson Decl., Ex. I at 56. Within Article 6, Section 6.03 covers a "Preretirement Surviving Spouse Pension," and provides, in part:

(a) If a participant who has a Qualified Spouse dies before his Effective Date of Benefits, and if at the time of his death the Participant was Vested or otherwise could have established entitlement to a pension, a Preretirement Surviving Spouse Pension shall be paid

to his surviving Spouse.

Id., Ex. I at 57. There is no dispute that Michael Hamilton was "Vested or otherwise could have established entitlement to a pension" under the terms of Section 6.03(a). Sections 6.03(c) and 6.03(d) provide different forms of payment that a surviving spouse may choose from, including a monthly benefit commencing on the date the Participant would have reached age 55 or an immediate lump sum death benefit, as provided. in Section 7.01 (described below), plus a reduced monthly benefit commencing on the date the Participant would have reached age 55. Id

Also within Article 6, Section 6.05 covers the "Relation to Qualified Domestic Relations Order," and provides:

Any rights of a former Spouse or other alternate payee under a Qualified Domestic Relations Order, with respect to a Participant's pension, shall take precedence over those of any later Spouse of the Participant under this Article.

Id., Ex. 1 at 58: Because Sections 6.03 and 6.05 are located in the same "Article," Section 6.05 expressly limits Section 6.03.

On July 31, 2002, the Fund Office received a letter dated July 30, 2002 from the Children's counsel, notifying the Fund Office that a Qualified Domestic Relations Order ("QDRO") exists with regard to Michael Hamilton, "creat[ing] the existence of an alternate payee's right (the children) to receive all or a portion of the benefits payable with respect to a participant." Robinson Decl. 19, Ex. 4; see also Pls.'

Interrog. Answer No. 3, Hopp Decl. 14 (claiming lump sum benefit under Section 7.01).

Article 7 of the National Plan is entitled "Death and Severance Benefits." Robinson Decl., Ex. 1 at 58. Within Article 7, Section 7.01 covers the "Death Benefit Before Retirement (Lump Sum)," and provides, in part:

Effective July 1, 1982, in the event a Participant dies before his Effective Date of Benefits but after he has accrued five years of Future Service Credit, a Lump Sum Death Benefit equal to the contributions made by his Employers on his behalf shall be paid to his designated Beneficiary. However, if a Preretirement Surviving Spouse Pension is payable under Section 6.03, no Death Benefit will be paid under this Section, unless the Participant's surviving Spouse elects to receive it in accordance with Section 6.03(d). In any event, no benefits shall otherwise be payable under this Section if a Preretirement Surviving Spouse Pension is payable to the Spouse of the Participant under Section 6.03.

Robinson Decl., Ex. 1 at 58-59.

On August 28, 2002, the National Pension Fund denied the Children's claim for a Section 7.01 Lump Sum Death Benefit, finding that the Domestic Relations Order was not a QDRO. Robinson Decl. Par. 11, Ex. 6. The denial letter provided the following reasoning:

Exhibit A of the Decree of Dissolution is not a QDRO. It names the Plumbers and Pipefitters National Pension Fund as a Plan to which it applies. However, it does not name the children or the former spouse as an

Alternate Payee or Alternate Payees nor does it identify the Plan Participant. The order does not require the National Pension Fund to pay benefits directly to an Alternate Payee nor does it specify when payments are to begin, the duration of such payments or the form in which those payments are to be made....

Exhibit A requires Mr. Hamilton to name the children as his beneficiaries. It does not require any action by the National Pension Fund nor does it assign death benefit rights to the children or direct the Plan to pay death benefits to the children as Alternate Payees. A QDRO is not an appropriate or acceptable method of designating beneficiaries.

Id., Ex. 6 at 2.

The Children appealed the National Pension Fund's determination and, on March 16, 2003, the Appeals Committee of the National Pension Fund's Board of Trustees denied the appeal. Id. Par. 11. The Children then provided the National Pension Fund with a copy of the Child Support Order that they had inadvertently excluded from their earlier submissions to the National Pension Fund. Id., Exs. 7-8.

In a letter of July 25, 2003, the National Pension Fund reiterated its denial of the Children's claim. Id., Ex. 9. The National Pension Fund's denial letter noted that prior to July 30, 2002, the Children failed to provide notice to the Fund that a QDRO entitling them to benefits existed. The denial letter further explained the National Pension Fund's reasons for denying benefits to the Children:

The Fund's policy is that a QDRO cannot be entered after the death of one of the parties under the circumstances presented. . . . The Decree and Order impose no responsibility on the Fund to make payments to an Alternate Payee . . . but rather directed Mr. Hamilton to take an action. Further, even if Mr. Hamilton had complied with the terms of the Decree and named the children as primary Beneficiaries, they still would not have had an entitlement to benefits, because all benefits arising as a result of Mr. Hamilton's death were payable in the form of a Preretirement Surviving Spouse Pension to his Qualified Spouse under Section 6.03 of the Plan. Similarly, because the children were never married to Mr. Hamilton, they cannot qualify as a "Qualified Spouse" as that term is defined by Section 6.01 (c) of the Plan ...

Examination of the requirements for a QDRO under §206(d)(3) of ERISA reveals that certain required elements have not been provided in the Decree or the Order. . . . [T]he Decree . . . does not require the Fund to make payments to an Alternate Payee ... [T]he Decree fails to identify the benefit form to which the Hamilton children are entitled. . . . [T]he Decree completely fails to indicate the amount or percentage of the Participant's benefits to be paid by the Fund to each child, or the manner in which such amount or percentage is to be determined.

Id., Ex. 9 at 3.

The Children did not appeal this subsequent denial; instead, they filed the present lawsuit challenging the denial of benefits on July 31, 2003. See Compl. docket no. l. The Children now seek $62,425.00 from the

National Pension Fund; the amount requested is based on a representation by the National Pension Fund of the total amount of contributions made to the National Pension Fund on behalf of Michael Hamilton. Saichek Decl., Ex. A at 2.

State Plan

Like the National Pension Fund, the State Plan is a defined benefit, multi-employer pension fund. Miller Decl., docket no. 56, Par. 3. As such, the State Plan collects contributions from employers and, in exchange, promises to pay a particular pension benefit when, and if, the Participant becomes eligible. Id. Par. 4. The "Plan Document" for the State Plan describes the eligibility criteria, the method of computation of benefits, and to whom benefits are payable. Id. Ex. A. Michael Hamilton was a Participant in the State Plan. Id. Par. 6. At the time of his death, he had not retired from his employer and was not receiving any pension benefits from the State Plan. Id.

Mary Hamilton asserts a right to benefits under Sections 7.01 (a) and (c) of the State Plan, which provide, in part:

(a) If a Participant dies before reaching age 55, his surviving spouse, who he has been married to for at least one full year immediately preceding his death, shall receive a monthly Pre-Retirement Annuity Benefit...

(c) In lieu of a monthly Pre-Retirement Annuity Benefit set forth in Paragraph (a) above, the surviving souse may elect in writing to receive immediately after

the death of the Participant a lump sum payment...

Miller Decl., Ex. A at 26-27.

The Children submitted the Dissolution Decree (i.e., the alleged QDRO) to the State Plan on June 27, 2002. Cable Decl., Ex. A at 1. The Children make their claim for a lump sum death benefit under Section 7.03 of the State Plan. Pls.' Answer to State Plan's Counterclaim, docket no. 30, 16 (admission of fact). Section 7.03 provides, in part:

If a Participant is Vested and dies before retirement benefits commence as set forth in Section 4, and no beneficiary of his is eligible for benefit payments under Section 7.01 ["Pre-Retirement Annuity Benefit for Spouse"] or Section 7.02 ["Optional Annuity Benefit for Dependents Before Retirement"], then his designated Beneficiary shall receive a lump sum death benefit.

Miller Decl., Ex. A at 27. On July 1, 2002, the State Plan rejected the Children's claim for benefits. Cable Decl., Ex. A at 1. The Children now seek $97,163.82 from the State Plan; the amount requested is based on a representation by the State Plan of the total amount of contributions made to the State Plan on behalf of Michael Hamilton. Saichek Decl., Ex. B at 1.

Supplemental Plan

The Supplemental Plan is attached to the Scowcroft Declaration submitted in support of Plaintiffs' Motion for Summary Judgment. Scowcrof Decl., Ex. 6. As previously noted, the Supplemental Plan does not take a position on the merits of the cross-motions for

summary judgment that are before the Court. The Children make their claim for benefits under Sections 6.1(a)(1)-(2), 7.1 (d) and 7.8(b) of the Supplemental Plan.[3] Id., Ex. 6 at 13, 15,18. The Children now seek $81,862.69 from the Supplemental Plan; the amount requested is based on a representation by the Supplemental Plan of the total amount of contributions made to the State Plan on behalf of Michael Hamilton. Saichek Decl., Ex. C at 1.

DISCUSSION

1. Summary Judgment Standard of Review

Summary judgment is appropriate when "there is no genuine issue as to any material fact and. . . the moving party is entitled to a judgment as a matter of law." FED. R. Civ. P. 56(c). The parties have acknowledged that there is no genuine issue as to any material fact. This case is appropriately resolved on cross-motions for summary judgment.

II. Cross-Motions for Summary Judgment

The Children contend that the Domestic Relations Order is a QDRO, and that because it is a QDRO, ERISA requires the Plans to pay them benefits. Mary Hamilton, the National Pension Fund and the State Plan contend that even if Michael Hamilton had named the Children as the beneficiaries under each pension plan and even if the Domestic Relations Order is a QDRO, ERISA requires the Plans to pay surviving spouse benefits to Mary Hamilton and to pay nothing to the Children.

To resolve these competing claims, the Court must: (1) determine whether the Domestic Relations Order between Michael and Linda Hamilton is a QDRO; (2) assess Mary Hamilton's rights to pension benefits as the surviving spouse; and (3) determine whether the rights of the Children take precedence over those of Mary Hamilton if the Domestic Relations Order is a QDRO.

A. QDRO Status of Domestic Relations Order

whether the Domestic Relations Order is a Qualified Domestic Relations Order ("QDRO") within the meaning of ERISA is a question of law for the Court to determine de novo. See Stewart v. Thorpe Holding Co. Profit Sharing Plan, 207 F.3d 1143, 1150 n.5 (9th Cir. 2000). ERISA's preemption clause does not apply to QDROs.[4]

1. Statutory Requirements for QDRO under ERISA

The statutory requirements for a QDRO, as outlined in Section 206(d)(3) of ERISA, 29 U.S.C. §§ 1056(d)(3)(B)-(D), and the parallel provisions in Section 414(p) of the Internal Revenue Code, 26 U.S.C. §§ 414(p)(1)-(p)(3), ("Section 206(d)(3)"), provide:

(B) For purposes of this paragraph –

(i) the term 'qualified domestic relations order' means a domestic relations order –

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate

payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(B) with respect to which the requirements of subparagraphs (c) and (D) are met, and

(ii) the term `domestic relations order' means any judgment, decree, or order (including approval of a property settlement agreement) which

(I) relates to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law).

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies –

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order -

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

29 U.S.C. §§ 1056(d)(3)(B)-(D); see also 26 U.S.C. §§ 414(p)(1)-(p)(3).

2. Case Law Interpretation of QDRO Statutory, Requirements

The purposes of the requirements in Section 206(d)(3)(C)-(D) are to ensure that the payee designated by the domestic relations order is a legitimate alternate payee and that the domestic relations order does not increase the payment burden on the plan or mandate the assignment of benefits previously assigned by another QDRO. Stewart, 207 F.3d at 1149-50. The Ninth Circuit has rejected an overly technical approach to the QDRO requirements. In Stewart, the Ninth Circuit held that the dissolution

decree was a QDRO where, despite technical defects in the decree, there was no uncertainty concerning the identity of the beneficiary and the address of the beneficiary was easily ascertainable. Id. at 1150-52. Stewart held that the decree's failure to specify the number of payments was not a fatal defect under Section 206(d)(3)(C)(iii) because the plan did not provide for periodic payment of benefits. Id. at 1152. The Ninth Circuit reasoned that "[a] s long as a formula within a plan can be clearly and easily followed, courts have not hesitated to find [ERISA's] specificity requirements satisfied despite the fact that the decree calls for some modicum of interpretation." 207 F.3d at 1153 n.7 (quoting In re Williams, 50 F.Supp.2d 951, 960 (C.D. Cal. 1999)).

The Ninth Circuit's approach to QDROs, as exemplified in Stewart, follows the approach of other circuit courts, which have also "liberally construed the criteria by which a domestic relations order will qualify as a QDRO." Id. at 1153 (citing Metropolitan Life Ins. Co. v. Marsh, 119 F.3d 415, 422 (6th Cir.1997) and Metropolitan Life Ins. Co.v. Wheaton, 42 F.3d 1080 (7th Cir. 1994)). In Marsh, like in Stewrt, there was no need to specify the number of payments or period for which the order applies because the case involved a life insurance policy to be paid in a lump sum on decedent's death and not payments from a pension plan. 119 F.3d at 422. In both Marsh and Wheaton, the decrees failed to specify how the proceeds were to be divided between alternate payees, but both courts presumed equal distribution because that is what the applicable state law of wills and estates would have presumed. Marsh, 119 F.3d at 422 (applying Michigan law); Wheaton, 42 F.3d at 1085 (applying Wisconsin law). In addition, in

Wheaton, the Seventh Circuit held that the decree was a QDRO despite its failure to, give the children's address (per the Section 206(d)(3)(C)(i) requirement) and its failure to name the plan to which it applied (per the Section 206(d)(3)(C)(iv) requirement). See 42 F.3d at 1084.

The Tenth Circuit in Hawkins v. Commissioner of Internal Revenue, 86 F.3d 982 (10th Cir.1996), disagreed with Wheaton to the extent Wheaton eliminated ERISA's QDRO specificity requirements; but, at the same time, the Tenth Circuit did reject an "unduly narrow" reading of the requirements, noting that such a reading "has the potential to frustrate the important congressional purpose by making it unreasonably difficult for domestic relations orders to qualify as QDROs." Stewart, 207 F.3d at 1155 (quoting Hawkins, 86 F.3d at 989-91)). The Second Circuit in Bigelow followed the Sixth Circuit's approach in Marsh, looking for "substantial compliance" with the requirements. See Metropolitan Life Ins Co. v. Bigelow, 283 F.3d 436, 444 (2d Cir. 2001).

3. Application of ERISA's Statutory Requirements for a QDRO to the Hamilton Domestic Relations Order

In the present case, the National Pension Fund does not dispute that the Domestic Relations Order satisfies the following subsections of Section 206(d)(3): (B)(ii)(1), (B)(ii)(II), (C)(i), (C)(iv) or (D)(iii). Thus, the National Pension Fund impliedly concedes that the Domestic Relations Order relates to a provision of child support, see (B)(ii)(1), is made pursuant to a State domestic relations law, see (B)(ii)(H), includes the name and mailing address of the participant and each alternate

payee covered by the order, see (C)(i), includes each plan to which the order applies, see (C)(iv), and does not require the payment of benefits to an alternate payee that are required to be paid to another alternate payee under another QDRO, see (D)(iii).

The National Pension Fund argues that the Domestic Relations Order is not a QDRO because it fails to satisfy the following subsections of Section 206(d)(3): (B)(i)(1), (C)(ii), (C)(iii), (D)(i) and (D)(ii).

a. (B) (i)(I): Respect to Participant

Subsection (B)(i)(1) provides that "the term `qualified domestic relations order' means a domestic relations order which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan." 29 U.S.C. §. 1056(d)(3)(B)(i)(I). In the motions pending before the Court, the National Pension Fund does not dispute the fact that the Domestic Relations Order clearly identifies David Hamilton and Sarah Hamilton as alternate payees. Instead, the National Pension Fund argues that no benefits are payable "with respect to" the Participant, Michael Hamilton, because the surviving spouse benefit vested in Mary Hamilton upon Michael Hamilton's death. The Children respond that their interest in the Plans arose when the Domestic Relations Order was filed with the state court, before any surviving spouse benefit had vested and before there was even a person in whom such a benefit could vest.

An alternate payee's interest in a pension is established

(and correspondingly a participant's interest is limited, or subject to be limited) at the time of the divorce decree. In re Gendreau,122 F.3d 815, 818 (9th Cir.1997). "Because a QDRO only renders enforceable an already-existing interest, there is no conceptual reason why a QDRO must be obtained before the plan participant's benefits become payable on account of his retirement or death." T se, 234 F.3d at 421. Once a pension plan is on notice that a domestic relations order has issued that may be a QDRO, the plan must segregate the benefits that would be due to the alternate payee under the terms of the domestic relations order for 18 months while the QDRO status is determined. Id.

The Children's interest in Michael Hamilton's pension was established at the time of the entry of the Domestic Relations Order, before Mary Hamilton had married Michael Hamilton. The National Pension Fund's "with respect to" argument is without merit. The Domestic Relations Order satisfies Subsection (B)(i)(1).

b. (c)(ii) Amount of Benefits or Manner to Determine Subsection (C)(ii) requires the order to clearly specify "the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined." 29 U.S.C. § 1056(d)(3)(C)(ii). The National Pension Fund argues that Subsection (C)(ii) is not met because the Domestic Relations Order fails to "make any provision for the distribution of spousal annuity benefits to an alternate payee." National Pension Fund's Mot. at 19. The National Pension Fund argues that, under case law regarding the entitlement of a former spouse to a surviving spouse's annuity benefits, the Children do not

qualify for benefits. Id. at 20. The Court rejects this argument because the present case does not concern a claim by a former spouse for surviving spousal annuity benefits. The case law regarding two spouses fighting over a spousal annuity is irrelevant here.

In its reply, the National Pension Fund puts forth a different Subsection (C)(ii) argument - i.e., that the Domestic Relations Order fails to "provide[] for how the monthly annuity payments should be distributed or how this amount will equal the $62,425.00 demanded." National Pension Fund's Reply, docket no. b1, at 13. The National Pension Fund confuses the Children's claim with Mary Hamilton's claim. The Children are not demanding to step in the shoes of Mary Hamilton in an effort to receive monthly annuity payments; rather they are demanding to receive a lump sum death benefit available to designated beneficiaries, and the Plans specify the manner in which such an amount is to be determined. For example, Section 7.01 of the National Plan provides that a Lump Sum Death Benefit is "equal to the contributions made by [a participant's] employers on his behalf." Robinson Decl., Ex. 1 at 58. The Domestic Relations Order is not deficient for failing to state the amount of benefits to be paid to the Children not only because the amount is easily calculated under the terms of the Plans but also because the amount was not determinable when the Domestic Relations Order was entered. Michael Hamilton was still working, and therefore his employer was continuing to contribute to the Plans on his behalf. The Domestic Relations Order satisfies the Subsection (C)(ii) requirement.[5]

c. (c)(iii): Number of Payments or Period

Subsection (C)(iii) requires the order to clearly specify "the number of payments or period to which such order applies." 29 U.S.C. § 1056(d)(3)(C)(iii). The National Pension Fund argues that the Domestic Relations Order fails to satisfy Subsection (C)(iii) because it does not explain how the annuity payments are to be distributed, noting that Mary Hamilton has a choice to elect a Preretirement Surviving Spouse Pension in the amount of $751 per month starting in July 2007 or a lump sum immediately plus a reduced monthly benefit starting in July 2007. The National Pension Fund asserts that "[t]here is no provision in the Decree which in any way directs Michael Hamilton's subsequent spouse to choose any particular payment schedule, and there is no provision to determine upon whose life the annuity payments should be based in the first place (e.g., Mary, David or Sarah)." National Pension Fund's Mot. at 21. The National Pension Fund's argument avoids the salient issues. The Children seek a lump sum payment as provided for beneficiaries under the terms of the National Plan, not an annuity payment as provided for surviving spouses.

In Stewart, the Ninth Circuit held that where a Plan does not provide for periodic payments of benefits, there is no need for the trial court to determine the number of payments affected by the order. 207 F.3d at 1152. Although Stewart involved a defined contribution plan whereas this case involves a defined benefit fund, the principle is the same. Because the Domestic Relations Order intends that Michael Hamilton name the Children as "the beneficiaries" under the Plans and because the Plans provide for benefits to beneficiaries in a one-time lump sum payment upon the death of a participant, there is no need to specify the number of

payments or the periods to which the Order applies.

d. (D)(i): Form of Benefit

Subsection (D)(i) prohibits the order from "requir[ing] a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan." 29 U.S.C. § 1056(d)(3)(D)(i). The National Pension Fund misconstrues this requirement and argues the "precedence" issue[6] which is more aptly addressed after the QDRO status of the Domestic Relations Order is determined (see Section II.C of this Order).

Subsection (D)(i) requires the domestic relations order to conform to a pension plan such that it does not create a new form of payment. ERISA explicitly provides that a domestic relations order may provide for the payment of benefits in "any form in which such benefits may be paid under the plan to the participant." 29 U.S.C. § 1056(d)(3)(E)(i)(M). The Children here are seeking a lump sum payment that is available under all of the Plans. See National Plan, § 7.01, State Plan § 7.03, and Supplemental Plan § 7.1(d). Furthermore, the Domestic Relations Order itself does not address the form of payment, and, as a result, cannot be interpreted to require a "form of benefit, or any option, not otherwise provided under the plan." 29 U.S.C. § 1056(d)(3)(D)(i). The Domestic Relations Order complies with Subsection (D)(i) by letting the terms of the Plans govern the form of the benefits.

e. (D) ii : No Increase in Benefits

Subsection (D)(ii) prohibits the order from "requir[ing] the plan to provide increased benefits (determined on

the basis of actuarial value)." 29 U.S.C. § 1056(d)(3)(D)(ii). The National Pension Fund argues that the Domestic Relations Order cannot be qualified if the National Pension Fund is obligated to pay a Preretirement Surviving Spouse Pension to Mary Hamilton under Section 6.03 and a Lump Sum Death Benefit to the Children under Section 7.01. The Children respond that their benefits would be provided in lieu of some, if not all, of Mary Hamilton's benefits.[7] As will be discussed in Section II.C. of this Order, where a QDRO has assigned pension benefits to an alternate payee, Section 6.05 of the National Plan limits Section 6.03 governing Preretirement Surviving Spouse Pensions.

The National Pension Plan also argues that there would be an increase in benefits if it is required to pay the Preretirement Surviving Spouse Pension for the life of the Hamilton children. The Children, however, are not seeking monthly annuity payments. They are seeking lump sum death benefits. Neither of the National Pension Fund's "increase in benefits" arguments have any merit. The Domestic Relations Order is in compliance with Subsection (D)(ii).

f. Conclusion

The Domestic Relations Order satisfies ERISA's statutory requirements for a QDRO.

B. Mary-Hamilton's Asserted Rights as Surviving Spouse

The Retirement Income Equity Act of 1984 ("REA")see Footnote 4) amended ERISA not only to protect former

spouses and children from a previous marriage, but also to protect widows of plan participants by requiring a pre-retirement surviving spouse pension. See Section 205(a)(2) of ERISA, 29 U.S.C. § 1055(a)(2) (requiring a pension plan to provide "a qualified preretirement survivor annuity ... to the surviving spouse of [a vested] participant [who dies before the annuity starting date]"). Accordingly, Mary Hamilton seeks benefits under the corresponding Section 6.03 of the National Plan. As noted above, Section 6.03 requires that a Preretirement Surviving Spouse Pension be paid to a surviving spouse "if a Participant who has a Qualified Spouse dies before his Effective Date of Benefits, and if the Participant was Vested or otherwise could have established entitlement to a pension." Robinson Decl., Ex. 1 at 57. There is no dispute that Mary Hamilton is a "Qualified Spouse" or that Michael Hamilton was "Vested or otherwise could have established entitlement to a pension." Thus, on the face of Section 6.03, it appears that Mary Hamilton is entitled to a Preretirement Surviving Spouse Pension; however, Section 6.03 must be read in conjunction with Section 6.05 and must be interpreted in light of ERISA's requirement that compliance with a QDRO is mandatory. See Section II.C for further discussion).

In asserting her rights to benefits, Mary Hamilton does not rely upon her status as the designated beneficiary. The National Pension Fund determined that Mary Hamilton was entitled to pension benefits not because she was Michael Hamilton's designated beneficiary, but because she was Michael Hamilton's surviving spouse at the time of his death. Robinson Decl., Ex. 9 at 2; see also National Pension Fund's Mot., docket no. 50, at 1,12 n.4. Under Section 7.01 of the National Plan, "no

benefits shall otherwise be payable under this section [to a designated Beneficiary] if a Preretirement Surviving Spouse Pension is payable to the Spouse of the Participant under Section 6.03." Robinson Decl., Ex. 1 at 58-59. It is Mary Hamilton's position that even if Michael Hamilton had named the Children as the beneficiaries, the Children would not be entitled to any benefits by operation of Section 7.01.

Under the State Plan, Mary Hamilton seeks benefits under Section 7.01, which provides for a "Pre-retirement Annuity Benefit for Spouse" at the date the participant would have reached 55 years of age, or, in the alternative, a lump sum payment immediately after the death of the participant. Miller Decl., Ex. A at 26-27. Mary Hamilton asserts that Section 7.01 trumps Section 7.03 of the State Plan, giving precedence to surviving spouses over designated beneficiaries.

The Supplemental Plan takes no position in this case. Like the other two plans, the Supplemental Plan provides for Preretirement Death Benefits to be paid to a participant's surviving spouse as either an annuity or a lump sum under Section 7.5. Scowcroft Decl., Ex. 6 at 17.

C. Resolution of Competing Claims

In Section II.A of this Order, the Court holds that the Domestic Relations Order is a QDRO. Section II.B of this Order outlines the pre-retirement surviving spouse benefits available under all of the Plans, and Mary Hamilton's asserted rights to those benefits. This section seeks to reconcile the Children's and Mary Hamilton's asserted rights to pension benefits.

1. Standard of Review

The Court reviews the National Pension Fund's Board of Trustee's decision to deny benefits to the Children as beneficiaries under Section 7.01 under an "arbitrary and capricious" standard of review because the National Plan grants the Board of Trustees broad discretionary authority under Section 10.06. See Firestone Tire and Rubber Co. v. Bruch, 489 U.S.101,115 (1989) (reviewing denial of benefits under a de no o standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan). "A plan administrator's decision to deny benefits must be upheld under the abuse of discretion standard if it is based upon a reasonable interpretation of the plan's terms and if it was made in good faith." McDaniel v. The Chevron Corp., 203 F.3d 1099, 1113 (9th Cir. 2000).

2. Mandatory Compliance with QDRO under ERISA

Section 206(d)(3)(A) of ERISA governs the obligation of pension plans to pay benefits according to the provisions of a QDRO. Section 206(d)(3) provides, in part:

Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

29 U.S.C. § 1056(d)(3)(A). The Ninth Circuit requires a pension plan to disburse proceeds as required by any domestic relations order that is determined to be a QDRO:

Under ERISA, the pension plan must pay the bearer of a [Domestic Relations Order] if it determines that the order is a proper QDRO, without further inquiry; '[c]ompliance with a QDRO is obligatory.'

Tise, 234 F.3d at 424 (9th Cir. 2000), amended on other grounds 255 F.3d 661 (9th Cir. 2001) (quoting Blue v. UAL Corp.,160 F.3d 383, 385 (7th Cir.1998)). To the extent a QDRO conflicts with terms in a pension plan, "[a] state court's domestic relations order overrides the terms of the plan if it meets seven [QDRO] criteria laid down in § 1056(d)(3)(C) and (D)." Blue 160 F.3d at 385. This law, which heavily favors Plaintiffs, controls in the present case.

3. Construction of the Terms of the Plans

The National Pension Fund argues that the terms of the National Plan govern the distribution of benefits, and that a QDRO cannot take away Mary Hamilton's statutorily mandated Preretirement Surviving Spouse Pension. Similarly, Mary Hamilton argues that the terms of the Plans govern and that, because the Plans require the payment of benefits to a surviving spouse, whether the Domestic Relations Order is a QDRO under ERISA is moot. See Hamilton's Mot., docket no. 45, at 4.

The National Pension Fund overlooks the mandatory obligation to comply with a QDRO under Section 206(d)(3)(A) of ERISA. The National Pension Fund's construction of the terms of its own plan is arbitrary and capricious. The National Pension Fund overlooks the critical fact the National Plan itself recognizes that any rights to pension benefits conferred upon an

alternate payee pursuant to a QDRO will take precedence over those of a future spouse. Section 6.05 plainly states that:

Any rights of a former Spouse or other alternate payee under a Qualified Domestic Relations Order, with respect to a Participant's pension, shall take precedence over those of any later Spouse of the Participant under this Article.

Robinson Decl., Ex. I at 58. Section 6.05 expressly limits Section 6.03 such that the National Pension Fund is not obligated to pay Mary Hamilton where there is a QDRO that confers rights on an alternate payee. As a result, the portion of Section 7.01 that the National Pension Fund relies heavily upon - which provides that "no benefits shall otherwise be payable under this Section [to a designated beneficiary] if a Prerefrement Surviving Spouse Pension is payable to the Spouse of the Participant under Section 6.03" - is irrelevant because no Preretirement Surviving Spouse Pension is payable under Section 6.03 if there is a QDRO conferring rights to a Participant's pension to an alternate payee under Section 6.05.

Although the National Pension Fund omits any mention of Section 6.05 from its discussion of Article 6 survivor benefits in its cross-motion, it briefly addresses Section 6.05 in its reply, after the Children raise the issue in their response. See Pls.' Response, docket no. 58, at 6,15; National Pension Fund's Reply at 12. The National Pension Fund argues that Section 6.05 is not important because it relates to "any rights" of the alternate payee, and the Domestic Relations Order did not actually confer any rights on the Children but only awarded the

Children rights to be named as the beneficiaries under the pension.[8] The fact that the Domestic Relations Order did not directly assign rights to the Children does not preclude or eliminate the Children's rights. A domestic relations order satisfies the QDRO requirements simply by requiring a participant to name his children as beneficiaries even though the participant, in fact, names someone else. See e.g., Bigelow, 283 F.3d 436 at 439 (2d Cir.); Marsh, 119 F.3d at 417 (6th Cir.); Wheaton, 42 F.3d at 1081 (7th Cir.). As far as the National Plan is concerned, there are no conflicts between the terms of the National Plan and the QDRO because the National Plan acknowledges that the rights of the Children, as alternate payees, take precedence over the rights of a surviving spouse.

The State and Supplemental Plans also have provisions addressing the payments of benefits in conformity with a QDRO. See State Plan, Sections 2.27 (defining alternate payee), and 6.11 (a)-(b) (describing calculation of benefits payable under a QDRO); Supplemental Plan, Sections 2.16 (defining QDRO) and 9.5 (describing QDRO exception to prohibition against assignment of plan benefits). These plans do not contain rules governing the precedence of rights conferred under a QDRO over rights of a future spouse. The lack of such language in the State and Supplemental Plans, however, is not dispositive because ERISA mandates compliance with a QDRO, and a QDRO overrides any conflicting terms in a pension plan.

4. Conclusion

The Plans' respective denials of benefits to the Children were arbitrary and capricious. The Domestic Relations

Order, which is a QDRO, conferred rights to pension benefits upon the Children, David Hamilton and Sarah Hamilton, at the time it was entered. Compliance with a QDRO is mandatory. Under ERISA case law and the terms of the National Plan itself, the Children's rights to pension benefits as designated beneficiaries take precedence over Mary Hamilton's rights to pension benefits as the surviving spouse.

CONCLUSION

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Summary Judgment, docket no. 25, is GRANTED. There is no genuine issue as to any material fact, and Plaintiffs are entitled to judgment as a matter of law. The Domestic Relations Order is a Qualified Domestic Relations Order ("QDRO") within the meaning of Section 206(d)(3) of ERISA. The QDRO requires payment to Plaintiffs of lump sum benefits as a result of the death of Michael Hamilton in the following amounts:

The National Pension Fund	$62,425.00
The State Plan	$97,163.82
The Supplemental Plan	$81862.69
TOTAL	$241,451.51

These benefits are to be distributed equally between the two Plaintiffs. Plaintiffs are entitled to payment of these amounts before any benefits can be paid under the Plans to Intervenor Mary Hamilton.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Intervenor Mary Hamilton's Cross-Motion for Summary Judgment,

docket no. 45, is DENIED.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant National Pension Fund's Cross-Motion for Summary Judgment, docket no. 50, is DENIED.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Defendant State Plan's Joinder in Defendant National Pension Fund's Cross-Motion for Summary Judgment, docket no. 55, is DENIED.

IT IS SO ORDERED.

DATED this 13th day of May, 2004.

THOMAS S. ZILLY
United States District Judge

Footnotes

fn1At oral argument, the Court denied Defendant National Pension Fund's motion to dismiss for failure to exhaust remedies.

fn2On April 15, 1998, the Child Support Order was modified. Id., Ex. 3.

fn3 Section 7.8(b) of the Supplemental Plan provides for a payment to "an alternate payee who is a former spouse" pursuant to a QDRO. The Court does not limit the term "alternate payee" to a former spouse, however, because ERISA allows an "alternate payee" to be a child. See 29 U.S.C. § 1056(d)(3)(K) ("The term

`alternate payee' means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.").

fn4 Although ERISA generally preempts state laws relating to an employee benefit plan, see Section 514(a), 29 U.S.C. § 1144(a), ERISA's preemption clause, as modified by the enactment of the Retirement Income Equity Act of 1984 ("REA"), Pub. L. No. 98-397 § 303(d), 98 Stat.1426 (1984), does not apply to QDROs. See Section 514(b)(7), 29 U.S.C. § 1144(b)(7). The QDRO provisions "are essential to one of REA's central purposes, which is to give enhanced protection to the spouse and dependent children in the event of divorce or separation." Boggs v. Boggs, 520 U.S. 833, 847 (1997); see also Trustees of the Directors Guild of America-Producer Pension Benefits Plans v. Tise, 234 F.3d 415, 425 (9th Cir. 2000), mended on other grounds 255 F.3d 661 (9th Cir. 2001) (noting that ERISA's QDRO provisions mitigate the impact of divorce upon children and former spouses by elevating a plan participant's legal obligations to a former spouse or children of a previous marriage over the participant's express wishes to provide for other individuals as designated beneficiaries).

fn5Although neither party raises the issue, there is some uncertainty in the Domestic Relations Order about how the benefits should be distributed between the Children. However, as noted in Section II.A.2 of this Order, this uncertainty is resolved by looking to Washington law. Washington law allows for equal distribution of the proceeds between the Children, as

they have requested. See RCW § 11.04.015(2)(a). This also is consistent with Marsh, 119 F.3d at 422, and Wheaton, 42 F.3 d at 1085.

fn6The National Pension Fund argues that the Domestic Relations Order fails to satisfy Subsection (D)(i) if it is interpreted to require the National Pension Fund to pay a Lump Sum Death Benefit to the Children in lieu of a Preretirement Surviving Spouse Pension to Mary Hamilton. The National Pension Fund emphasizes the language in Section 7.01 of the National Plan, which provides that no Lump Sum Death Benefit is payable to a beneficiary "if a Preretirement Surviving Spouse Pension is payable to the Spouse of the Participant under Section 6.03." National Pension Fund's Reply at 7. The National Pension Fund erroneously assumes that Section 6.03 mandates a payment to Mary. Hamilton, despite the existence of Section 6.05, which provides that any rights of an alternate payee under a QDRO "shall take precedence over those of any later Spouse of the Participant under this Article."

fn7The following issue is not before the Court: whether Mary Hamilton is entitled to any benefits, and if so how much, in light of the Court's ruling that the Children are entitled to benefits.

fn8The National Pension Fund contradicts itself by presenting this argument. In its crossmotion, it asserted that it "is irrelevant to the outcome of this case" that "Michael Hamilton did not designate the Plaintiffs as `beneficiaries under the pension."' National Pension Fund's Mot., at 1,12.

Filed 5/28/04
No. C03-2438Z

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT SEATTLE

DAVID HAMILTON et al, v. PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND et al

JUDGMENT IN A CIVIL CASE

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT

Plaintiff's Motion for Summary Judgment is GRANTED. The QDRO requires payment to Plaintiffs of lump sum benefits as a result of the death of Michael Hamilton in the following amounts: The National Pension Fund - $62,425.00. The State Plan - $97,163.82. The Supplemental Plan - $81,862.69. TOTAL $241,451.51. These benefits are to be distributed equally between the two Plaintiffs. Plaintiffs are entitled to payment of these amounts before any benefits can be paid under the Plans to Intervenor Mary Hamilton.

Intervenor Mary Hamilton's Cross-Motion for Summary Judgment is DENIED.

Defendant National Pension Fund's Cross-Motion for Summary Judgment is DENIED.

Defendant State Plan's Joinder in Defendant National Pension Fund's Cross-Motions for Summary Judgment is DENIED.

Filed 5/28/06 2/

Casey Condon Deputy Clerk
BRUCE RIFKIN, Clerk

Filed 2/24/06

No. 04-35526, No. 04-35828, No. 04-35798

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

DAVID HAMILTON; SARAH HAMILTON, a minor, Plaintiffs-Appellees, v. WASHINGTON STATE PLUMBING & PIPEFITTING INDUSTRY PENSION PLAN; PLUMBERS & PIPEFITTERS NATIONAL PENSION FUND; WESTERN WASHINGTON U.A. SUPPLEMENTAL PENSION TRUST, Defendants-Appellants, MARY HAMILTON, Defendant-intervenor-Appellant.

ORDER

Before: Cudahy,* T.G. Nelson, and McKeown, Circuit Judges

The panel has voted to deny the petition for panel rehearing, and Judge McKeown has voted to deny the petition for rehearing en banc. Judges Nelson and Cudahy recommend denial of the petition for rehearing en banc.

The full court has been advised of the petition for rehearing and rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

Footnote

*The Honorable Richard D. Cudahy, Senior United States Circuit Judge for the Seventh Circuit, sitting by designation.

APPLICABLE STATUTORY PROVISIONS

§205 Requirement of joint and survivor annuity and preretirement survivor annuity (29 U.S.C. §1055)

(a) Each pension plan to which this section applies shall provide that -

(1) in the case of a vested participant who does not die before the annuity starting date, the accrued benefit payable to such participant shall be provided in the form of a qualified joint and survivor annuity, and

(2) in the case of a vested participant who dies before the annuity starting date and who has a surviving spouse, a qualified preretirement survivor annuity shall be provided to the surviving spouse of such participant.

***

§206 Form and payment of benefits (29 U.S.C. §1056)

(d)(1) Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated.

***

(3)(A) Paragraph (1) shall apply to the creation, assignment, or recognition of a right to any benefit payable with respect to a participant pursuant to a domestic relations order, except that paragraph (1)

shall not apply if the order is determined to be a qualified domestic relations order. Each pension plan shall provide for the payment of benefits in accordance with the applicable requirements of any qualified domestic relations order.

(B) For purposes of this paragraph –

(i) the term "qualified domestic relations order" means a domestic relations order -

(I) which creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan, and

(II) with respect to which the requirements of subparagraphs (C) and (D) are met, and

(ii) the term "domestic relations order" means any judgment, decree, or order (including approval of a property settlement agreement) which –

(I) relates to the provisions of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant, and

(II) is made pursuant to a State domestic relations law (including a community property law.

(C) A domestic relations order meets the requirements of this subparagraph only if such order clearly specifies –

(i) the name and the last known mailing address (if any) of the participant and the name and mailing address of each alternate payee covered by the order,

(ii) the amount or percentage of the participant's benefits to be paid by the plan to each such alternate payee, or the manner in which such amount or percentage is to be determined,

(iii) the number of payments or period to which such order applies, and

(iv) each plan to which such order applies.

(D) A domestic relations order meets the requirements of this subparagraph only if such order –

(i) does not require a plan to provide any type or form of benefit, or any option, not otherwise provided under the plan,

(ii) does not require the plan to provide increased benefits (determined on the basis of actuarial value), and

(iii) does not require the payment of benefits to an alternate payee which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order.

***

(E) A domestic relations order shall not be treated as failing to meet the requirements of clause (i) of subparagraph (D) solely because such order requires that payment of benefits be made to an alternate payee –

***

(iii) In any form in which such benefits may be paid under the plan to the participant (other than in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse).

(F) To the extent provided in any qualified domestic relations order –

(i) the former spouse of a participant shall be treated as a surviving spouse of such participant for purposes of section 205 (and any spouse of the participant shall not be treated as a spouse of the participant for such purposes)....

***

(K) The term "alternate payee" means any spouse, former spouse, child, or other dependent of a participant who is recognized by a domestic relations order as having a right to receive all, or a portion of, the benefits payable under a plan with respect to such participant.

§514 Other laws (29 U.S.C. §1144)

(a) Except as provided in subsection (b) of this section, the provisions of this title and Title IV shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in section 4(a) and not exempt under section 4(b)." This section shall take effect on January 1, 1975.

***

(b)(7) Subsection (a) shall not apply to any qualified domestic relations orders (within the meaning of section 206(d)(3)(B)(i)), qualified medical child support orders (within the meaning of section 609(a)(2)(A)), and the provisions of law referred to in section 609(a)(2)(B)(ii) to the extent they apply to qualified medical child support orders.